Public Services to Children, Youth and Their Families in British Columbia:

The Need for Integration

Public Report No. 22
November 1990

Ombudsman
Fairness for all in British Columbia

Public Services to Children, Youth and Their Families in British Columbia

THE NEED FOR INTEGRATION

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November 1990

PUBLIC SERVICES TO CHILDREN, YOUTH AND THEIR FAMILIES IN BRITISH COLUMBIA:

THE NEED FOR INTEGRATION

PUBLIC REPORT NO. 22

This report reflects the experience and concerns of the Ombudsman office developed over the past ten years through the investigation of complaints regarding the provision of public services to children, youths and their families in British Columbia. This work has been coordinated over the past three years within a special team in the Ombudsman office under the Deputy Ombudsman for Children and Youth. The Ombudsman office handles approximately 2,000 cases each year involving children and youths.

This report also represents the results of extensive and constructive consultation with the many provincial government agencies providing or regulating these services, and with a wide range of professional, academic, service, community and family groups throughout the province.

Children have been described as society's most valuable, and most vulnerable, resource. When problems of poverty, illness, isolation or violence are added to this natural vulnerability, the risks compound.

The 1989 United Nations Convention on the Rights of the Child identifies the family as the fundamental group of society and the natural environment for the growth and well-being of children. However, when the family is unable or unwilling to fulfill this role, government has a responsibility to assist.

It should be clearly stated at the outset that a strong and professional dedication to the best interests of children is evident throughout the public service in this province. However, government involvement is no guarantee that the risks to children will not continue or even worsen. The many dangers confronting children and youths with special needs in our society, and the complexity and number of the public agencies required to assist, create further challenges. Public services in support of children, youths and their families must be timely, appropriate, integrated and supportive rather than intrusive. This requires careful cooperation among the many agencies involved, and special sensitivity to the wishes and needs of the affected individuals. Above all, it is essential that children, youths and families have the opportunity to participate in decisions touching on their fundamental interests; they must have the right to be heard.

With approximately 18,000 children and youths receiving special public services away from their families in B.C. in any one year, and with eight different provincial ministries involved in providing these services, the challenges of sensitivity, integration and participation are immense.

The many issues raised in this report will be addressed immediately by the Child and Youth Secretariat, made up of Assistant Deputy Ministers and seconded senior staff from the major ministries providing child, youth and family services. Some concerns are already being dealt with; the rest will be resolved over the next two years. The Ombudsman office looks forward to its ongoing participation in this process, and will report further on its success at the end of this period.

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Acknowledgements

The preparation of this report required the extraordinary dedication of the child and youth team in the Ombudsman office. In particular, I would like to recognize the outstanding service of Eric Jones, MSW, RSW, who was the major researcher on this project. I would also like to thank the other members of the Ombudsman interdisciplinary children and youth team for their contribution to this report and their important work in this field.

The work of the Ombudsman office in the children and youth field brings it into regular contact with many consumer, professional, academic, service and community groups. Their thoughtful comments on the important issues addressed in this report are reflected in it, and are greatly appreciated.

Finally, I would like to comment on the consultative role of the Deputy Ministers' and Assistant Deputy Ministers' Committees on Social Policy before this report was finalized. Ombudsman recommendations are without force if they are presented in a vacuum and are not recognized as informed, impartial and realistic. The detailed representations made by these senior officials on the draft report were invaluable to the credibility of the final product, and ensure that the recommendations will be given timely and energetic attention.

S.O.

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Overview

This report includes the findings of a major investigation of the Eagle Rock Youth Ranch, a government funded facility where, on February 14, 1989, a 15 year old ward of the Ministry of Social Services and Housing (MSSH) died in a fire set by two other young residents. The investigation served to focus and reinforce this office's existing concerns about the pressing need to integrate services and strengthen safeguards to ensure adequate protection and fair treatment for children and youth when special services are required. Systemic improvements are necessary in the way in which government plans, organizes, delivers and holds accountable the services provided in this highly complex public service sector. Currently, nine provincial authorities share responsibility for administering major child, youth and family programs. These are:

- the Ministry of Advanced Education, Training and Technology (the B.C. Youth Council),
- the Ministry of the Attorney General (legal services including the Family Advocate program),
- the Ministry of Education (school board funding and special education),
- the Ministry of Health (public health, medical, hospital, mental health, forensic services and community care facility licensing),
- the Ministry of Labour and Consumer Services (Alcohol and Drug Programs),
- the Ministry of Native Affairs (policy coordination),
- the Ministry of Social Services and Housing (child welfare, rehabilitation and income assistance services),
- the Ministry of the Solicitor General (the Corrections Branch, Family Court Counsellors and Police services), and
- the Workers' Compensation Board (Criminal Injury Compensation program).

The great majority of British Columbian children and youth are well cared for within their families, schools and communities. Public health and education programs have been developed in support of all families with children and these sectors have recently received or are receiving public scrutiny through Royal Commissions. The day care system, another major family support program, has also been the subject of recent public debate across Canada. However, the public service sector responsible for the provision of special services and interventions when a child, youth or family is experiencing problems has not received the same level of public attention in B.C. for more than a decade.

Tens of thousands of children, youth and their families each year require special services because of complex and inter-related problems including

- child abuse and neglect,
- family violence,
- family dysfunction,
- mental, emotional and behavioural disorders,
- physical, developmental and learning disabilities,

- juvenile delinquency,
- alcohol and drug abuse, and
- parental disputes about child custody, access and maintenance.

When these and other related problems occur, special services and safeguards are required consistent with government's belief, stated in the 1989 Inter-Ministry Protocols for the Provision of Support to Schools, that:

> ...children have a right to basic physical and emotional support and to an environment, free from abuse and neglect, which nurtures their growth and development.

The consultation process: in search of consensus

This report reflects the investigative experiences during the past three years of the Ombudsman office's multi-disciplinary child and youth team which, in 1989, received nearly 2000 jurisdictional complaints concerning children and youths. The report's preparation included extensive consultations with many respected and credible individuals with legitimate interests in this field representing youth, parent and service provider perspectives. Extensive consultations were also held with the Deputy Ministers' and Assistant Deputy Ministers' (ADMs') Committees on Social Policy. These consultations reflected a shared concern for the well-being of British Columbian children and youths.

Detailed draft reports prepared by the Ombudsman's office and the Deputy Ministers' Committee on Social Policy provided a useful framework for these discussions. Consensus existed about the need for improved integration and accountability of cross-ministry, multi-disciplinary services provided to children, youths and their families. The most effective means of achieving these objectives will be the subject of a comprehensive review by government ministries during the next two years. This will be carried out by a newly established Child and Youth Secretariat, (comprising an ADM Standing Committee on Child and Youth Services and management level staff seconded from the relevent ministries), in consultation with the Ombudsman's office. Broad consultations with communities will be necessary to ensure that lasting and consensual resolutions are found to the vexing problems of service fragmentation in this sector.

Concerns of special groups

This report does not attempt to address selectively the special needs and grievances of poor and Native people, although this office believes that recommendations intended to improve integration will enhance accessibility, service quality and fairness for all children and youths. During the course of this office's consultations, we were frequently told of concerns about the inadequacy of income assistance rates for families and children, the lack of affordable housing for low income families (particularly single mothers with children), and the critical situations of many Native children, youths and their families. The Ombudsman does not have the legal authority to investigate complaints about the allocation of resources, which are matters of public policy and properly determined through a political process.

Nor does the Ombudsman have jurisdiction over the federal government which must play a major leadership role if lasting solutions are to be found to the long standing grievances of Native peoples. The over-representation of poor and Native peoples in child welfare and youth corrections systems presents a serious, and as yet unresolved, socio-economic problem within Canada.

Many Native communities wish to assume complete responsibility for the provision of child, youth and family programs. In child welfare matters, this process has begun, with four Child and Family Service agreements being entered into between the Nuu-cha-nulth, MacLeod Lake, Carrier-Sekani and Spallumcheen bands and the Ministry of Social Services and Housing which transfer, in various forms, responsibilities for family support and child welfare services. The MSSH has signified its willingness to continue to provide authority to Native agencies pursuant to the provisions of the Family and Child Service Act under three conditions; namely

1. that an adequate funding agreement is in place;
2. that Native agencies are ready to take full responsibility for child and family services; and
3. that Native people are in agreement with assuming responsibility under provincial legislation.

Pending lasting and comprehensive solutions, government ministries have indicated to this office a continuing commitment to

- extensive consultation with Native communities,
- the first MSSH Native Family and Children's Services Unit opened in Vancouver in April 1990,
- cross-cultural training for staff who work with Native children and families,
- review emerging issues for Native peoples through an inter-ministry Native Social Policy Working Group, chaired by the Ministry of Native Affairs,
- help make the justice system more accessible, responsive and relevant to Native peoples through a local consultation on Native justice issues,
- better address the health care needs of Native peoples through consultations with Native leaders and service organizations.

Ombudsman's investigation of the Eagle Rock Youth Ranch

Each year in British Columbia, approximately eighteen thousand children and youth with special needs are placed away from their families into residential programs (not including acute care hospitals) that are operated, funded or regulated by five government ministries. Out-of-home placements may include foster homes, group homes, correctional facilities, treatment centres, institutions and residential schools. The great majority of these children and youth have special care, management and treatment needs and a significant proportion are victims of physical, emotional or sexual abuse and neglect.

On February 14, 1989, a fire at the Eagle Rock Youth Ranch near Chase, British Columbia, resulted in the death of a 15 year old ward of the Ministry of Social Services and Housing (MSSH). Two 14 year old residents of Eagle Rock, one a ward of the MSSH and the other in MSSH care by agreement with his parents, were subsequently convicted. One youth was sentenced to three years in detention for second degree murder; the other youth was raised to the Adult Court, convicted of manslaughter and the Judge recommended that the youth serve his two year sentence in a youth detention centre because:

> To transfer (the youth) into the adult population of the penitentiary system would be the worst thing that could happen.

Both youths were developmentally disabled foetal-alcohol-syndrome children with mental ages much younger than their chronological ages.

For some time prior to the fire, this office had been investigating complaints related to problems in cross-ministry planning for another Eagle Rock resident. Serious concerns about the program had been brought to our attention by MSSH and Ministry of Health officials as well as by a former employee of the contracted program. Preliminary inquiries indicated that these concerns were recurrent and long standing.

Eagle Rock was a privately operated residential youth care facility funded under contract to the MSSH and licensed pursuant to the Community Care Facility Act by the Ministry of Health. The program originated in 1981 with funding from the Corrections Branch of the Ministry of the Solicitor General (then Attorney General). In 1982, the MSSH assumed funding responsibility. Youths placed at Eagle Rock were described as among the most disturbed in the province. Many were on probation and assessed to be in need of special care, management and treatment.

The number of government authorities involved with this contracted facility, and the serious, long standing concerns expressed about the quality of care being provided to residents, suggested that a thorough investigation by this office, from a cross-ministry perspective, was warranted.

Issues pertaining to the cause of death of the 15 year old youth at Eagle Rock are beyond the scope of this report. This tragic incident has been reviewed by

- the criminal justice system,
- the Coroner's Office,
- the Regional Fire Commissioner's Office, and
- internal investigations by the MSSH and the Ministry of Health.

Our investigation found that serious concerns existed about the quality of care, supervision and programs being provided to youths at Eagle Rock throughout the program's history. During approximately eight years of operation, diverse and usually credible concerns had been expressed by

- local community residents,
- Corrections Branch probation officers,
- a County Court Judge,
- MSSH officials who referred youth to the program,
- former contract employees who worked at Eagle Rock,
- mental health officials,
- the Office of the Fire Commissioner, and
- Ministry of Health licensing officials.

Although Eagle Rock should have been licensed to operate when it opened in 1981, a full license was not granted by the Child Care Licensing Board until December 1986. The major reason for the delay was the facility's failure to meet statutory health, safety and care standards pursuant to the Community Care Facility Act and Provincial Child Care Regulations. Cross-ministry communication was often ineffective or non-existent in response to the problems that existed at Eagle Rock.

The contractor and funding authority officials agreed that the facility was consistently underfunded and ill-equipped to respond to the level of special needs exhibited by many of the youths placed there — many of them from distant areas of the province. Eagle Rock experienced serious difficulty in recruiting and retaining appropriately skilled staff. This was demonstrated by a newspaper advertisement stating that applicants required no previous experience working with children and youth. Contract staff informed us that in-service training was minimal.

On at least two occasions, contract staff were fired following MSSH investigations of alleged physical abuse. Youths were often permitted to engage in potentially dangerous activities on the ranch and in a sawmill without proper supervision. When the fatal fire was set, the sole staff person on duty was awakened by a resident. The program was not funded to provide awake overnight staff. One of the youths who set the fire had also set a fire one week previously. This was not reported to licensing officials. A psychiatrist was later informed by one youth that he had set the fire because he was desperate to leave Eagle Rock. MSSH officials stated that they were planning to transfer both youths responsible for setting the fire when the tragedy occurred.

Eagle Rock ceased operations following the fire of February 14, 1989, by mutual consent between the facility operator and the funding authority. However, the cross-ministry problems which were found to exist at this contract facility serve to reinforce our concerns from other investigations about the lack of adequate safeguards and the fragmented state of cross-ministry services for children and youth, particularly those who require placement away from their families in government-funded programs.

Systems problems in cross-ministry coordination

In 1988, based on a growing volume of complaints concerning cross-ministry services to special needs children, youth and their families, this office documented its concerns to the Deputy Ministers' Committee on Social Policy. Inter-Ministry Children's Committees (IMCCs), established by government following the 1979 International Year of the Child, no longer existed in their original form as part of a province-wide coordinating system. In some areas, IMCCs were no longer operating. The functions of the provincial IMCC had been assumed by the Deputy Ministers' Committee and considerable confusion existed about the role, mandate, structure and accountability of existing local and regional IMCCs.

This office suggested the need for a comprehensive review by government of current approaches to cross-ministry coordination and case management and suggested the need for a provincially driven, formally mandated, and resource equipped mechanism to better define accountability and ensure service integration.

In response to our concerns, the Deputy Ministers' Committee on Social Policy established a task force to review the current operations of IMCCs and the need for cross-ministry case management protocols. Subsequently, this Committee has restated the need for local and regional IMCCs to be reorganized where they had previously existed. A committee was also established to review children's services, geographic boundary issues and cross-ministry case management approaches.

Although these were welcomed initiatives, we believed that continuing problems would occur without the full-time attention of a single authority within government to provide informed and authoritative policy and planning leadership. The scope of the responsibilities and heavy agendas of the Deputy Ministers' Committee on Social Policy appeared to preclude it from paying the specialized attention to policy development and program planning that we believed to be necessary within a service sector where the combined ministry annual budgets approximate two hundred million dollars. Our experiences in complaint investigations involving children and youth, and frequent concerns expressed by consumers, service agencies, IMCCs and professional organizations, have reinforced our view that more effective provincial integrating and accountability mechanisms are required in this highly complex public service sector.

The agreement of the Deputy Ministers' Committee on Social Policy to establish a Child and Youth Secretariat in response to our concerns provides an opportunity to establish integrated approaches that are responsive to the special needs of children, youth and their families. This is a complex undertaking and expectations for quick solutions would be unrealistic. No jurisdiction is free from the integration problems being experienced by this province in this public service sector, although some provinces appear to have established promising initiatives to deal with aspects of the problems.

Summary of Ombudsman concerns and results of discussions with government ministries

This section is intended to summarize the major concerns of the Ombudsman's office and the consensus achieved through consultations with the Deputy Ministers' and Assistant Deputy Ministers' Committees on Social Policy. A complete summary of recommendations is presented immediately following this Overview.

Integrated policy development and program planning

Independent of this report, provincial government ministries have recently embarked on a comprehensive process intended to review and update major legislation concerning children and families including

- the School Act,
- the Family and Child Service Act,
- the Mental Health Act, and
- the Community Care Facility Act.

The federal government is also currently reviewing the Young Offenders Act. The interrelated nature of these child-focused statutes provides a unique opportunity to consolidate and integrate approaches to the provision of child, youth and family services within a common framework of values and principles.

Strong provincial leadership at the administrative level is also required to ensure that the complex array of cross-ministry, multi-disciplinary policies, programs and services is integrated and responsive to the special needs of children and their families. The Deputy Ministers' Committee on Social Policy and the Ombudsman's office agree with the need for improved integration of child, youth and family services. To achieve this objective, the Deputy Ministers' Committee on Social Policy will establish a Child and Youth Secretariat with a mandate to

- monitor the range of current cross-ministry projects and protocols and ensure integrated approaches to policy development and program planning,

- ensure the effective operation of IMCCs and establish meaningful communication links between the Child and Youth Secretariat, IMCCs and communities,
- establish formal links with the Ombudsman office's child and youth team in order to monitor issues of mutual concern and address the recommendations in this report, and
- undertake a comprehensive review of child, youth and family services in B.C. and, in consultation with communities, make recommendations to government within two years intended to improve provincial approaches to integration.

Lasting solutions to the vexing problems of service fragmentation in this sector will require a child-centred consensus through increased collaborative efforts among government ministries, consumers and community groups, service agencies and professions.

A number of recommendations in this report emphasize the pressing need to ensure, as part of government's comprehensive review process, the existence of

- an adequate data base required for informed policy development and program planning,
- more effective and integrated multi-disciplinary approaches to assessment, referral, case management, and service provision,
- a planned continuum of multi-disciplinary child, youth and family services that reinforce the importance of prevention,
- special safeguards to protect the rights of children and youth, particularly those whose freedoms have been restricted, and
- an organizational climate and management style that is child-focused and sensitive to the need for family support within a complex, multi-disciplinary environment.

The Child and Youth Secretariat will address these matters during the next two years. It will be assisted by of a multi-disciplinary team of senior government officials seconded from relevant ministries and reporting directly to the ADM Standing Committee.

Standards of health, safety and care in child and youth programs

The existence of explicit, comprehensive and objective standards, founded in legislation, is required to safeguard the rights of children and youth receiving public services, particularly those placed away from their families in residential programs. To ensure quality and public accountability, this office believes that minimum standards are required that apply to all child and youth programs, irrespective of the contracting or funding authority.

Our investigations, including Eagle Rock, indicate that current approaches within government to standard-setting, monitoring and enforcement are limited in their scope and effectiveness. The licensing provisions of the Community Care Facility Act and Provincial Child Care Regulations are primarily concerned with vulnerable adults and child day care and do not adequately address the requirements for standards in residential and day programs for children and youth.

De-institutionalization and the trend to place children and youth in parent model and family based settings have placed increasing pressure on communities and traditional foster homes to care for children and youth with increasingly serious special needs. The major emphasis on *facility* standards in current licensing regulations, and inadequate attention paid to *care* and *program* standards are of serious concern to this office. While each ministry has, to varying degrees, established standards of care within administrative policy, these standards are not uniformly or consistently applied across ministries although the basic needs of children and youth are similar.

Standards established through the enabling legislation of funding authorities, most notably the Family and Child Service Act, are often inadequate. Standards established through contracts are, as was the case at Eagle Rock, inadequate or inconsistently monitored and enforced. More comprehensive and uniform approaches to licensing and contracting within and among ministries are required to ensure

- equitable funding for similar child and youth programs,
- appropriate specification of operator and staff qualifications,

- adequate staffing ratios and levels of supervision,
- appropriate access of residents to special education programs, and
- health and safety protection for youths engaged in work preparation programs.

As previously indicated, government ministries are currently reviewing major child-related legislation and have agreed that the concerns and recommendations of this office about health, safety, care and program standards will be addressed as part of this review. A cross-ministry focus will be assured through the Child and Youth Secretariat.

Special measures to safeguard the rights of children and youths

Legislation is the strongest means available in a democratic society to express fundamental values and principles. Uniform and integrated approaches to child, youth and family services could be strongly reinforced through a common statement of principles stated in legislation. This would act to guide all ministries and agencies administering services to this highly vulnerable population.

Special safeguards are also necessary to protect children from physical, including sexual, abuse. Many abused children are the victims of adults they know. Many offenders have held positions of trust working with children. Most jurisdictions operate some form of abuse registry to ensure effective screening of individuals applying to work in positions of trust with children and to track child abusers who have been identified through a fair criminal, civil or administrative process. In B.C., the child abuse registry was replaced by a central index in 1984 and the continuing dialogue between the MSSH and the Ombudsman's office was reported in the 1988 Ombudsman Annual Report.

New administrative review and screening procedures for alleged offenders were recently introduced within legislation in Manitoba. It is too soon to evaluate the cost-effectiveness of that province's initiatives. Legitimate concerns exist about the effectiveness of registry systems, particularly those that track, and may further victimize, child victims. However, consensus appears to be evolving within Canada about the need for some form of registry system to

- screen individuals wishing to work in positions of trust with children, and
- provide a non-identifying data base for use in research that is intended to assist preventive initiatives.

Government ministries, through the Child and Youth Secretariat, have agreed to revisit during the next two years the concerns raised by this office and have indicated their intent to monitor closely registry systems in other jurisdictions, particularly Manitoba. The Ombudsman's office recognizes that a range of approaches are necessary to ensure that identified offenders are effectively and fairly screened from access to vulnerable children. This includes the effective implementation of fairly applied criminal record checks, the subject of the 1987 Ombudsman Public Report No. 5.

In B.C., a youth under 16 years of age can be locked up for treatment without his or her consenting to treatment. The youth's parent or guardian can consent on his or her behalf even though the youth may have neither committed a crime nor be committable under the Mental Health Act. The practice of placing youths in secure mental health facilities without access to appropriate procedural safeguards and review procedures was of great concern to this office.

During the process of consultation with government officials, we were informed of changes to the Mental Health Act, (which came into force on October 15, 1990), intended to safeguard the rights of these youths. Access to Review Panels and Court review is now provided to youths who are informally committed to mental health facilities. The Ombudsman welcomes this change and, with the Child and Youth Secretariat, will be monitoring the fairness of its implementation.

Administrative review and advocacy

Children are often called our most valuable, and vulnerable, resource. Lacking experience and without voting influence, they are maintained, for increasingly extended periods, in a dependent state. They must rely on adults to act in their best interests and to ensure their safety and well being. But increasingly, children and youths are being viewed as persons in their own right.

On September 29 to 30, 1990, Canada's Prime Minister co-chaired a World Summit on Children at the United Nations. A commitment was made by many member nations to improve the situation of the world's children. The summit also profiled the U.N. Convention on the Rights of the Child which will act as a barometer of change and a tool for child advocates. While Canada's children do not face the same life and death struggles of children in developing countries, child poverty, child abuse, and the special plight of Native children and those living on the streets, are among the indicators of needed change within Canada.

Recognizing the need for greater integration of efforts on behalf of children, the federal government recently appointed a federal minister responsible for children, who will oversee a children's bureau which will play an integrating role at the federal level. Under the Canadian constitution, the burden of service provision is carried primarily by the provinces which in certain instances rely on cost sharing arrangements with the federal government. Current disputes about federal-provincial cost sharing programs must be resolved if attempts to establish adequate and integrated services for children and youths are to be successful.

The vulnerability of children is increased when they have special needs and when they are removed from their homes and placed in government funded, contracted and regulated residential programs. Eagle Rock, and recent events in other Canadian provinces, are reminders that the safety and well-being of children placed in state care cannot be automatically assumed or taken for granted. Special safeguards are necessary to ensure that these children are treated fairly and with the respect and dignity they deserve.

For most children, their parents act as natural advocates, ensuring that they receive necessary services. In many cases parents are unable to properly assume this role without assistance. When children require special services, the complex, bureaucratic nature of the delivery system can be overwhelming and, at times, may even act to deter children and their parents from seeking necessary support.

When problems arise and children or their parents are concerned about the appropriateness of an administrative decision or action which affects their fundamental interests, fairness requires access to appropriate review mechanisms intended to ensure a fair hearing. Current administrative review mechanisms established by child-serving ministries are not always explicitly stated, consistently applied and in compliance with principles of administrative fairness.

Internal administrative review

When concerns arise about the treatment of a child by public officials, each ministry must ensure the existence of an easily accessible and fair internal administrative review process. The child's perspective must be fairly heard and considered prior to important administrative decisions being made.

Government ministries have recognized that a tendency exists for staff in social service ministries to assume that, as complaints are routinely made by clients respecting the services delivered, children, parents and other advocates must be aware of their rights to request an administrative review. This awareness cannot be assumed, particularly when dealing with vulnerable children.

Each ministry operating in this sector has agreed to review current approaches and ensure the existence of explicitly defined and clearly communicated written administrative review procedures that comply with principles of administrative fairness. Complainants will be routinely assured that reprisals will not result when a concern is expressed and an administrative review requested.

External administrative review

When fundamental disagreements arise about the best interests of a child and the matter is not resolved through internal administrative review procedures, access is then required to an independent review or appeal process. While statute-based independent administrative review or appeal mechanisms exist in other jurisdictions, for example, Alberta, Ontario and Quebec, they are not incorporated in B.C.'s major child welfare legislation. Appeal procedures do exist respecting the refusal, discontinuance or reduction of income assistance pursuant to the GAIN Act but, for social services, have not yet been proclaimed into law by Cabinet.

The cross-ministry nature of services to children, youths and their families in this province requires access to independent administrative review or appeal mechanisms that can be fairly applied across authorities. Following extensive discussions, the Deputy Ministers' Committee on Social Policy proposed that the Ombudsman's office perform the functions of external administrative review.

While an Ombudsman traditionally does not have the authority to direct change when unfair administrative decisions are made, this office has achieved a consistently high rate of consensual complaint resolutions. The Ombudsman's neutrality, cross-ministry perspective, and ability to address individual and systemic issues, caused the Deputy Ministers' Committee to suggest this office as an appropriate body to perform the independent review functions suggested by this report. The assumption of this role by the Ombudsman's office will be carefully monitored for its effectiveness during the next two years by this office and the Child and Youth Secretariat.

Administrative child advocacy: the child's right to be heard

The need for child advocacy is widely accepted. Its appropriate application, particularly within the public sector, is often misunderstood. In recent years, the legal notion of individual client advocacy has been expanded and adapted in the administrative sector. Well documented experiences in Alberta and Ontario have led to the establishment of offices of child advocacy within the child welfare ministries of those provinces. Ontario's Ministry of Community and Social Services recognized that

> "...in any service delivery system there will be those individuals whose needs have not been met through conventional routes and who will need the assistance of an advocate who can act with or on behalf of them to meet their needs".

Advocacy on behalf of children is the shared responsibility of parents and guardians, relatives and friends, and public and private service providers. Many of the professions in this field include client advocacy in their codes of ethics and conduct. But this office believes that a more formalized approach to *administrative child advocacy* within government is necessary, distinct from legal advocacy (provided through lawyers), political advocacy, or class advocacy (usually referring to the efforts of those outside of the public service). In Ontario and Alberta, administrative advocacy was defined as a process or procedure which ensures that a child has the right and opportunity to be heard. Ontario's Children's Services Division recognized that

> "For some, this might be seen as a narrow interpretation of advocacy since the objectives of many advocacy efforts seem to go well beyond being heard. However, if one adopts a broad approach to the concept of being heard, then this definitional concern hopefully diminishes. Therefore, for example, the effort to obtain more government resources for children becomes a plea on behalf of the child unable to seek them himself (or herself)."

In order to thrive, administrative child advocacy must be viewed as an essential and healthy feature of a dynamic child welfare system. To be effective, it must be encouraged by government ministries and carried out in an appropriate and reasoned manner. This requires due sensitivity to the essential distinctions made in a parliamentary democracy between matters of public policy and matters of administration. The role of an administrative advocate will often be to empower youths, parents and other natural advocates to represent their concerns through appropriate review mechanisms and to monitor these mechanisms for their fairness.

Consensus evolved between the ministries and the Ombudsman's office about the need for administrative advocacy within government to ensure the right of the child to be fairly heard and appropriately represented when important administrative decisions are being made that affect her or him. It was also agreed that this advocacy function should have cross-ministry scope and be at arm's length from the ministries administering services. Rather than establish a separate office of child advocacy within the executive branch of government, as initially suggested by this office, the Deputy Ministers' Committee on Social Policy proposed this as a legitimate role of the Ombudsman office's child and youth team.

While client advocacy is not the traditional role of an Ombudsman's office and its neutrality must be preserved, the role of safeguarding the child's right to be fairly heard and appropriately represented is a fundamental component of administrative fairness. This role is, therefore, seen by this office and by the Deputy Ministers' Committee as complementing the existing functions of the Ombudsman's office. The effectiveness of this role will be closely linked to the existence of fair administrative review mechanisms, a strengthened IMCC system, and the Child and Youth Secretariat.

Summary

This office realizes the broad scope of systemic change that is recommended in this report. Lasting change will not be realized overnight. Extensive consultation by government with consumers, communities, and service providers is necessary in order to seek consensus about the most effective means of integrating services and preventing, wherever possible, situations which place children at risk.

This report recognizes the significant resources allocated by government ministries to this public service sector and the many cross-ministry initiatives undertaken to improve service delivery. The recommendations reflect a significant degree of consensus between this office and the Deputy Ministers' and Assistant Deputy Ministers' Committees on Social Policy. The positive tone and constructive nature of this extensive dialogue, and the creation of the Child and Youth Secretariat as a child-centred focal point with senior staff resources, are positive signs that must now be translated into a consensus-seeking process with communities to improve the situation of children, youth and their families.

This report, in many respects, signifies a new era in the child, youth and family services field in B.C. The enhanced role accepted by this office at the suggestion of government ministries will be to support, monitor and report on progress made in this public service sector. The following principles of administrative fairness concerning children, youths and their families will act to guide this process.

Principles of administrative fairness for children and youths

Elements of a fair, responsive and accountable administrative service delivery systems for special needs children and youth should include:

1. A clear and consistent foundation of policy and practice linked to legislation and regulations so that the lawful authority for decisions or recommendations affecting special needs children, youths and their families is apparent to all and clearly defined administrative accountability within government is ensured.

2. Structured and objective child-centred criteria defining discretionary limits and objectives to ensure that similar situations are treated consistently and different situations are treated individually when professionals, public servants and contract personnel are required to exercise judgment in their work with special needs children, youths and their families.

3. Codes of service — established through professional codes of ethics, job descriptions, policies and service contracts — which emphasize the fundamental responsibility of professionals, public servants and contract personnel to ensure fairness to each individual special needs child, youth and family. Appropriate and objective standards need to be set governing the professional skills and training required to operate at the different levels of service delivery, and establishing reasonable workloads so that statutory and administrative policy requirements can be properly carried out.

4. An open, sensitive and responsive organizational atmosphere and a management style that emphasizes the child-centred nature of the work, its intrusive potential, and the complex, diverse and often stressful multi-disciplinary environment within which the work takes place.

5. An organizational structure which recognizes the need to plan, organize, monitor and evaluate a planned, integrated multi-disciplinary continuum of services to children, youths and families through formal links among

a) the provincial government, with its concerns for provincial planning and priority setting, equitable resource allocation, and monitoring the consistent and fair application of its policies;

b) local communities — including municipalities, regional districts and non-governmental organizations — with their concerns for effective local planning, priorizing and service coordination of preventive and statutory services to special needs children, youths and families, and

c) stakeholders in the service delivery system, including children, youths and their families, advocates, volunteers, contractors, and service providers.

6. A unified set of principles, preferably established in a consolidated piece of legislation, governing the operation of all government operated, funded or regulated services to special needs children, youths and their families. These principles should include the need to

a) promote the best interests, protection and well-being of children and youths;

b) recognize that parents often need help in caring for special needs children and ensure that necessary services are provided in a manner which respects the integrity of the family and, wherever possible, on the basis of mutual consent;

c) use the least restrictive and intrusive intervention that is available and appropriate to assist special needs children, youths and their families as close as possible to their home communities;

d) recognize the need of children and youths for continuity of care and stable relationships that are sensitive to individual gender, cultural, religious, socio-economic, physical, psychological, intellectual, social and developmental differences; and

e) ensure that children and youths are afforded the opportunity to be heard and to be independently represented when important decisions affecting their interests are made and when concerns arise about the appropriateness of the services being offered or provided. Decisions affecting the interests and rights of children, youths and their families must be made according to clear, consistent criteria established in consideration of assessed service need, in compliance with principles of administrative fairness, and where applicable, the need for legal due process.

7. A common mechanism for gathering and analyzing appropriate information that is necessary for

a) individual case planning and tracking;

b) policy, program and service planning and priority setting; and

c) financial accounting and funding analysis, and research;

and which balances the need for client privacy with the need for appropriate access to information. Clients should have the right to review their individual records with the onus being on an authority to show cause if access is to be restricted.

8. Expeditious communication of all rights, policies, practices and decision-making criteria in language that is understandable to children and youth.

9. In accordance with 6(e), explicitly defined, easy to use complaint resolution mechanisms that

a) encourage a child and youth-centred approach to consensual dispute resolution through effective interdisciplinary case management practice;

b) provide procedurally fair, internal administrative review mechanisms when complaints arise;

c) provide a statute-based external review or appeal mechanism when disagreements arise about major decisions which affect the fundamental rights of life, liberty, livelihood, shelter, health, sustenance and security of the special needs child or youth;

d) provide assurances that no adverse effects will result from a complaint made in good faith by, or on behalf of, a child or youth; and

e) ensure the right of the child or youth to be heard and the availability of an advocate when important decisions are being made that affect the child, youth and, where applicable, his or her family.

The discussion, analysis and recommendations contained in this report reflect these principles.

Summary of recommendations

Recommendation #1

That a single authority within government be established with a formal mandate, executive powers and an adequate resource base to ensure uniform, integrated and client-centred provincial approaches to policy setting, planning and administration of publicly funded services to children, youths and their families.

Recommendation #2

That government review current approaches to the collection and analysis of non-identifying child-centred information and data and establish more compatible and comprehensive cross-ministry information systems that are accessible and useful to communities, policy makers, funders, researchers and service providers. Immediate activities to be explored should include:

a) Establishing, perhaps as part of a broadened mandate of IMCCs, improved cross-ministry resource and client based tracking systems that are sensitive to community needs and confidentiality requirements;

b) Identifying the nature and extent of cross-ministry case overlap and analyzing the implications for policy and program planning and integrated service delivery.

Recommendation #3

That government, in consultation with relevant consumer groups, service providers, and professional schools and organizations, review current approaches intended to promote and support integrated multi-disciplinary service delivery in the child, youth and family service field with the objective of:

a) ensuring easy access to needed services for children and youths with special needs;

b) minimizing the need for unnecessary multiple assessments when more than one service may be required by a child or youth with special needs;

c) establishing multi-disciplinary, cross-ministry approaches to case management that reinforce the need for consumer participation and consensual approaches to service planning and decision making;

d) ensuring the appropriate regulation, monitoring and enforcement of practice standards for counsellors and therapists in private practice;

e) encouraging multi-disciplinary approaches to professional education, research and staff development with particular attention paid to the training needs of front-line service providers; and

f) effectively utilizing child psychiatrists and psychologists so that funding adequacy and flexibility enables their increased use as diagnosticians, consultants, researchers and trainers.

Recommendation #4

That the proposed Child and Youth Secretariat undertake a comprehensive review of the cross-ministry service delivery system to children and youths with special needs and their families, and, in consultation with communities, consumers and service providers, formulate recommendations to government within two years intended to ensure:

a) integrated approaches to information-based planning, policy and program development and service delivery;

b) the existence of a culturally appropriate and regionally sensitive continuum of multi-disciplinary services that are easily accessible to special needs children, youths and their families;

c) a special focus on the need to develop responsive, locally accessible preventive services that support families and ensure the safety, health and well being of children and youths;

d) the existence of formal and effective links with communities in planning, organizing, delivering, monitoring and evaluating publicly funded services.

Recommendation #5

That the Ministry of Health, as part of the current review of the Community Care Facility Act, and in consultation with other relevant government departments and non-governmental agencies, review options for establishing separate and specialized licensing or certification for

a) adult residential care facilities,

b) child and youth residential care facilities,

c) child day care, and

d) youth and adult day programs.

Recommendation #6

That government, in consultation with appropriate caregiver contracting and educational organizations, act to establish, by legislative enactment, a comprehensive licensing or certification mechanism to be uniformly applied, monitored and enforced across all ministries which fund contracted residential child and youth care resources or facilities including

a) family based resources for one or two children or youths,

b) family based group living resources for three or more children or youths,

c) staffed facilities, and

d) receiving and assessment resources or facilities,

and that resource and facility categories be defined and regulated.

Recommendation #7

That, as a pre-condition of licensing or certification, any person applying to operate a residential child or youth resource or facility be required to submit to the licensing or certification authority

a) evidence of experience and qualifications appropriate for the type of program proposed, and

b) a detailed program description that has received the written approval of the contracting authority.

(Note: In some resource categories, such as family based resources for one or two children or youths, it may be appropriate for the contracting agency to assist in the preparation of a generic program description for use by applicants.)

Recommendation #8

That the residential child or youth resource caregiver, facility operator, or contracting authority be required, as a condition of continued licensing or certification, to submit to the local licensing or certification authority a written program evaluation to be completed on at least an annual basis, demonstrating compliance with standards and contracting authority satisfaction with the level and quality of care being provided. A detailed annual financial and administrative report should be required for private companies, societies and registered non-profit organizations or agencies.

Recommendation #9

That, in addition to minimum standards of health and safety, the licensing or certification authority regulate minimum standards of care appropriate for the different categories of residential child or youth resources or facilities with respect to

a) the qualifications of the operator, person in charge, staff and/or caregiver;

b) staff to child or youth ratios and/or levels of supervision expected, including provisions for 24 hour awake supervision in resources or facilities which

i) receive children or youths who have been assessed to be a potential danger to themselves or others, or

ii) operate as receiving or assessment resources or facilities;

c) documentation of individual care plans including provisions for ongoing case management, education, vocational training, and other special services, as well as procedures and schedules for regular reviews; and

d) internal and external complaint resolution mechanisms available to residents, caregivers and facility operators.

Recommendation #10

That government, through the Child and Youth Secretariat and in consultation with the proposed Contract Management Council, act to establish greater cross-ministry uniformity in contracting policies, procedures and practices, particularly in respect to

a) the standards of care and service expected for similar and defined categories of child and youth services that comply with appropriate licensing or certification requirements;

b) the provision of adequate and consistent funding levels to similar and defined categories of child and youth services;

c) funding methods based on the defined services being purchased rather than a subjective rating of an individual child's or youth's behaviourial or other difficulties;

d) the appropriate use of multi-year contracts in the child and youth services sector; and

e) documented regular evaluations to ensure program effectiveness and value for money.

Recommendation #11

That ministries which operate, fund or regulate residential resources or facilities for children and youths, in consultation with educational authorities, develop appropriate protocols to ensure that residents with special needs have access to appropriate educational and support services in accordance with the provisions of the School Act and in line with recommendations #29 to 32 of the Report of the Royal Commission on Education.

Recommendation #12

That uniform, cross-government standards of health and safety be developed, perhaps as part of the licensing or certification function, that comply with Workers' Compensation and Employment Standards Acts and ensure work safety and fair compensation for work performed in government operated, funded and regulated youth vocational training and work preparation programs.

Recommendation #13

That existing legislation, regulations and policy establishing the rights of special needs children, youths and their families be consolidated and expanded into a Provincial Statement of Principles for children, youths and their families that is consistent with the provisions of the Canadian Charter of Rights and Freedoms and the United Nations Convention on the Rights of the Child.

Recommendation #14

That the provincial government undertake to review current methods of pooling information for the purpose of protecting children from abuse with a view to improving systems which are intended:

a) as screening mechanisms for persons applying to work or volunteer in positions of trust with children;

b) for the collection of non-identifying information for use in research efforts aimed at combatting child abuse; and

c) to effectively track persons who have been found, through a fair administrative, civil or criminal process, to have abused a child or children.

Recommendation #15

That the Ministry of the Attorney General, in collaboration with the Child and Youth Secretariat, review current practices and provincial legislation regulating the use of secure special care and treatment facilities for youths who are

a) assessed to be a serious and immediate danger to themselves or others;

b) clinically assessed to be in need of, but may be resistant to, treatment;

c) not considered certifiable pursuant to the Mental Health Act; and

d) not sentenced by the Court to a period of time in secure custody,

with a view to recommending provincial approaches that are consistent with the provisions of the Canadian Charter of Rights and Freedoms, the United Nations Convention on the Rights of the child, and principles of administrative fairness.

Recommendation #16

That each Ministry responsible for providing or funding services in this sector of government act to ensure the existence of explicit and easy-to-use internal administrative review and complaint resolution procedures when concerns or complaints are received from or about special needs children and youths. These procedures should be defined in ministry policies, contracts and standards and be routinely communicated to children, youths and their parents or advocates in language that is easy to understand. These procedures should act to reassure complainants that reprisals will not result from a complaint being made.

Recommendation #17

That the provincial government act to strengthen current approaches to child advocacy and independent administrative review by

- fostering an environment which supports and encourages the advocacy role of parents, service providers and other natural advocates; and
- ensuring the establishment of an independent cross-ministry administrative advocacy and independent review mechanism with a statutory mandate and adequate resources to:

a) monitor and ensure protection of the rights of children and youths receiving or applying to receive publicly funded services;

b) ensure that children and youths are fairly heard and appropriately represented when significant administrative decisions are being made that affect them; and

c) receive and investigate complaints, review administrative decisions, and make recommendations about individual and systemic matters of concern to children and youths.

PART A

The Organization of Child, Youth and Family Services in B.C.

Prior to reviewing the facts established by our investigation of Eagle Rock and our analysis of current cross-ministry approaches to service delivery, it is helpful to understand how services to children, youths and their families are organized in B.C. Eight ministries and the Workers' Compensation Board share administrative responsibility for these services, and the major programs are identified below.

Principles of government service

During the process of consultation with the Deputy Ministers' Committee on Social Policy, this office was informed about the principles which form the basis of public services provided to children, youths and their families in British Columbia. While not established in legislation, these principles were defined by government as follows:

1. The family is the primary source of support for children and youths. Children who must be separated from their family are particularly vulnerable, and special efforts to ensure their safety and well-being are imperative;

2. Government's role is to support individuals, families and communities with minimum intrusion... government intervenes only when these primary support systems do not ensure the health, safety and well being of children, or where required by law;

3. Children are our most valuable investment for the future. Failure to protect and nurture our children and resolve problems as they arise may result in long-term and costly problems for the future;

4. Appropriate education and early intervention often minimizes the need for more intensive intervention at later stages of development;

5. The development and delivery of appropriate services to children and youths requires a constant process of program review and renewal. In a rapidly changing social environment, services must reflect current needs of children and families;

6. Each of the ministries providing services to children and youths is committed to providing the best service possible. This requires interministry cooperation and coordination to meet the needs of families and children in a flexible, responsive and timely fashion;

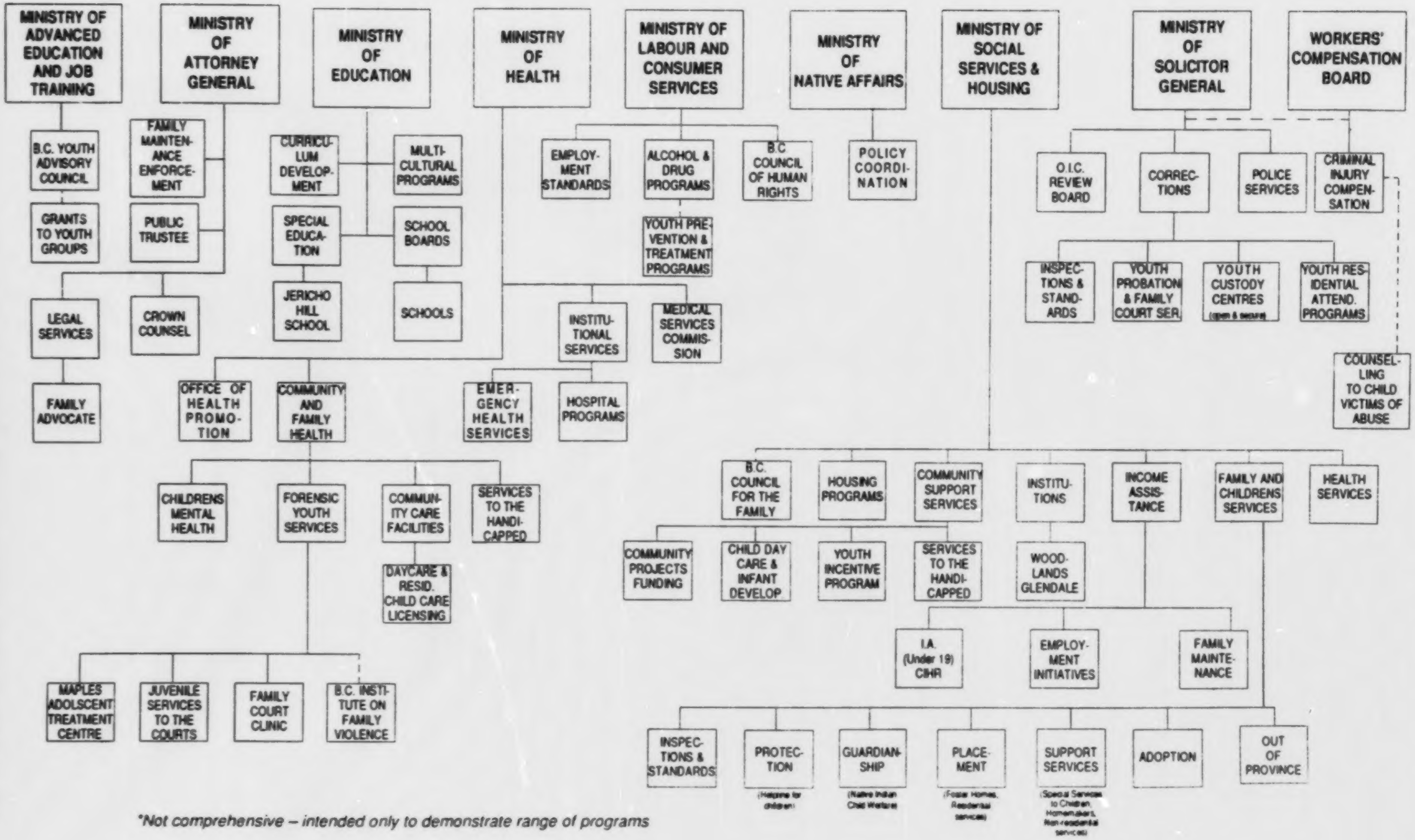
7. Interventions should reflect the unique needs and the legal rights of children and families... Services should be client-centred and coordinated in order to avoid having clients fall between jurisdictions and remain unassisted.

Ministry mandates

Six government ministries and the Workers' Compensation Board provide, contract, fund or regulate *direct services* to special needs children,

Major Child, Youth & Family Programs in B.C. by Administrative Authority*

(Dotted line indicates funding relationship)


MINISTRY OF ADVANCED EDUCATION AND JOB TRAINING
B.C. YOUTH ADVISORY COUNCIL
GRANTS TO YOUTH GROUPS
MINISTRY OF ATTORNEY GENERAL
FAMILY MAINTENANCE ENFORCEMENT
PUBLIC TRUSTEE
LEGAL SERVICES
CROWN COUNSEL
FAMILY ADVOCATE
MINISTRY OF EDUCATION
CURRICULUM DEVELOPMENT
MULTI-CULTURAL PROGRAMS
SPECIAL EDUCATION
SCHOOL BOARDS
JERICHO HILL SCHOOL
SCHOOLS
MINISTRY OF HEALTH
OFFICE OF HEALTH PROMOTION
COMMUNITY AND FAMILY HEALTH
INSTITUTIONAL SERVICES
MEDICAL SERVICES COMMISSION
EMERGENCY HEALTH SERVICES
HOSPITAL PROGRAMS
CHILDRENS MENTAL HEALTH
FORENSIC YOUTH SERVICES
COMMUNITY CARE FACILITIES
SERVICES TO THE HANDICAPPED
DAYCARE & RESID. CHILD CARE LICENSING
MAPLES ADOLSCENT TREATMENT CENTRE
JUVENILE SERVICES TO THE COURTS
FAMILY COURT CLINIC
B.C. INSTITUTE ON FAMILY VIOLENCE
MINISTRY OF LABOUR AND CONSUMER SERVICES
EMPLOYMENT STANDARDS
ALCOHOL & DRUG PROGRAMS
B.C. COUNCIL OF HUMAN RIGHTS
YOUTH PREVENTION & TREATMENT PROGRAMS
MINISTRY OF NATIVE AFFAIRS
POLICY COORDINATION
MINISTRY OF SOCIAL SERVICES & HOUSING
B.C. COUNCIL FOR THE FAMILY
HOUSING PROGRAMS
COMMUNITY SUPPORT SERVICES
INSTITUTIONS
INCOME ASSISTANCE
FAMILY AND CHILDRENS SERVICES
HEALTH SERVICES
COMMUNITY PROJECTS FUNDING
CHILD DAY CARE & INFANT DEVELOP
YOUTH INCENTIVE PROGRAM
SERVICES TO THE HANDICAPPED
WOODLANDS GLENDALE
I.A. (Under 19) CIHR
EMPLOYMENT INITIATIVES
FAMILY MAINTENANCE
INSPECTIONS & STANDARDS
PROTECTION
(Helpline for children)
GUARDIANSHIP
(Native Indian Child Welfare)
PLACEMENT
(Foster Homes, Residential services)
SUPPORT SERVICES
(Special Services to Children, Homemakers, Non-residential services)
ADOPTION
OUT OF PROVINCE
MINISTRY OF SOLICITOR GENERAL
O.I.C. REVIEW BOARD
CORRECTIONS
POLICE SERVICES
CRIMINAL INJURY COMPENSATION
INSPECTIONS & STANDARDS
YOUTH PROBATION & FAMILY COURT SER.
YOUTH CUSTODY CENTRES (open & secure)
YOUTH RESIDENTIAL ATTEND. PROGRAMS
COUNSELLING TO CHILD VICTIMS OF ABUSE
WORKERS' COMPENSATION BOARD

*Not comprehensive – intended only to demonstrate range of programs youths and their families. Additionally, the Ministries of Advanced Education, Training and Technology and Native Affairs perform coordinating and liaison roles. Briefly, the primary mandates of these authorities are as follows:

Advanced Education, Training and Technology

The B.C. Youth Council reports to the Minister of Advanced Education, Training and Technology and provides advice to government on issues affecting youth (defined as 15 to 24 years). The Council also provides grants to youth groups intended to promote youth participation and leadership.

Attorney General

The Ministry provides legal representation for the Superintendent of Family and Child Service, legal aid (including funding for the independent Legal Services Society of B.C. and the direct appointment of Family Advocates) to represent children or youths before the Courts, prosecution, victims and sexual assault services, public trustee (including wards of the MSSH), and public legal education.

Education

The Ministry sets overall education policy for government and provides funding for elected school boards which provide a wide range of special education programs to students. (Note: While the Ombudsman has jurisdiction to investigate complaints about the Ministry of Education, the jurisdiction over school boards which is included in the Ombudsman Act has not yet been proclaimed by Cabinet).

Health

The Ministry funds or provides medical, hospital, public and mental health services and regulates facilities under the Community Care Facility Act.

Labour and Consumer Services

The Ministry funds public education and treatment for persons with substance dependency.

Native Affairs

The Ministry provides liaison and coordination between government and Native communities and administers the First Citizens' Fund which makes annual allotments to post-secondary student bursaries and to Native Friendship Centres which often provide child, youth and family services.

Social Services and Housing (MSSH)

The Ministry funds or provides income assistance, adoption, handicapped, family support and child protection services, including alternate care for children who cannot live at home.

Solicitor General

The Ministry is responsible for law enforcement, correctional services, family court counselling and the criminal injury compensation program (administered by the Workers' Compensation Board), which funds treatment services to victims of abuse.

The legal mandates for out-of-home placements

Five ministries — Education, Health, Labour and Consumer Services, Social Services and Housing and the Solicitor General — operate, fund or regulate residential services for children and youths with special needs. The legal mandates affecting the placement of children and youths away from their parents (excluding acute care hospitals) include:

The Family and Child Service Act (Administered by the MSSH)

Section 4:

The Superintendent of Family and Child Service may enter into a short term custody agreement with a parent who requires temporary assistance (not to exceed three months) in caring for a child.

Section 5:

The Superintendent of Family and Child Service may enter into a special care agreement when it is agreed with a parent that a child is in need of special care and custody (for a period not to exceed six months with extensions permitted of not more than 12 months each).

Sections 9 to 14:

The Superintendent of Family and Child Service may apprehend a child when the child is deemed to be in need of protection and place the child in a resource approved by the Superintendent. Following apprehension, a report to Court must be made within seven days, and a Court hearing must be set within 45 days. At the hearing a Court must decide whether to

a) return the child to his or her parents, or

b) place the child into the temporary custody of the Superintendent of Family and Child Service for up to six months after which the Court may then return the child to his or her parents, renew the temporary custody order, or consider if the child should become a permanent ward of the Superintendent.

The Adoption Act (Administered by the MSSH)

Section 6:

A person intending to adopt a child must notify the Superintendent of Family and Child Service who must then inquire into matters related to the suitability of the prospective adoption and recommend to the Court, with reasons, the granting or refusal of an adoption order.

Section 7:

The Court may direct the Superintendent of Family and Child Service to investigate a prospective adoption by a relative.

Section 8:

The consent of the Superintendent of Family and Child Service must be obtained for the adoption of a permanent ward.

The Family Relations Act (Administered in part by the Ministry of the Solicitor General).

Section 29:

If a child has no guardian, or if the guardian refuses to care for a child or is incompetent at law, the Court may appoint the Superintendent of Family and Child Service as guardian of the child's person and the Public Trustee as guardian of the child's estate.

The Mental Health Act (Administered by the Ministry of Health)

Section 19:

A child may be admitted to a mental health facility either

a) at his or her own request when he or she has attained the age of 16 years, or

b) at the request of a child's parent or guardian if the child is not yet 16 years old.

Section 20:

A child may be admitted to, detained and treated in a mental health facility on the authority of medical certificates completed by two physicians indicating that the person is a mentally disordered person and requires medical treatment, care, supervision and control for his or her own protection or the protection of others.

The Young Offenders Act (A federal statute administered provincially in part by the Ministry of the Solicitor General, Corrections Branch)

Sections 7(1) and 7.1(1):

If a youth is arrested and detained by a provincial authority or a peace officer prior to Court disposition, he or she may be placed in the care of a responsible person. If held in custody, the youth must be placed separate and apart from adults unless a Youth Court judge or justice of the peace is satisfied that no such place is available or that it would not be safe;

Section 13:

If a youth is found to be not guilty by reason of insanity, Section 615 of the Criminal Code applies and the Court shall order that the youth be kept in strict custody until the pleasure of the Lieutenant Governor in Council is known;

Prior to disposition, a Youth Court may direct that a youth be remanded for a medical, psychological or psychiatric assessment to determine if the youth, because of insanity, is unfit to stand trial.

Section 20:

Where a Youth Court finds a youth guilty of an offence it may

a) with the consent of the youth, his or her parent or guardian and the hospital or facility, direct that the youth be detained for treatment;

b) place the young person on probation and order that he or she attend a training program and reside as directed by the probation officer;

c) commit the youth to open custody including a community residential centre, group home, child care institution, or forest or wilderness camp or any other similar facility;

d) commit the youth to closed custody (a facility designated by the Lieutenant Governor in Council of a province).

The School Act (Administered by the Ministry of Education)

Section 3:

British Columbia residents under the age of 16 years shall participate in an educational program;

Section 16:

The Lieutenant Governor in Council may establish provincial schools providing specialized types of education for deaf children and blind children;

Section 154: (interpretation only — no power)

Children may be placed by parents or guardians in a boarding house which is defined in the School Act "to include a private dwelling or apartment, a lodging house, hotel or school dormitory, and an institution in which children may board, other than a charitable institution" (approved by the Lieutenant Governor in Council);

Section 155:

A School Board shall, except as otherwise provided in the Act, provide sufficient school accommodation and tuition, free of charge.

The Ministry of Labour and Consumer Services (Alcohol and Drug Programs)

Programs are considered voluntary and do not operate under statutory authority. Children and youths are placed by their parents or guardians in residential programs funded by the ministry to receive treatment for substance abuse.

The scope of public services to children and youth

A broad range of services is provided by government to children, youths and their families. Many of these services are funded through cost-sharing arrangements with the federal government. Major non-residential services to the general child and youth population include the following:

Schools

As of September 30, 1988, one-half million children were registered in the public school system. Precise statistics for the number of children and youths residing in boarding situations while attending school were not available from the Ministry of Education, but a ministry official estimated that up to 1,000 of the 35,000 children and youths attending independent schools were boarders. Many of these children and youths were from out-of-province or out-of-country. A number of public schools also provide residential accommodation for students, particularly in the northern regions of the province.

Community and Family Health

Programs administered by the Ministry of Health's Department of Community and Family Health include youth forensic, child and youth mental health, public health, speech, language and hearing, dental health, nutrition and fitness; community health, and services to the handicapped. Virtually every family with children in B.C. is offered services through local health units which also provide public health services to schools. The public health system, including general practitioners, is a primary referral source for children with special needs. The Ministry of Health is also responsible for administering the Community Care Facility Act which establishes standards of health, safety and care in child day care programs and designated community care facilities.

Hospitals

During the 1987/88 fiscal year, 45,000 children and youths (defined as from birth to 14 years) were discharged from acute care hospitals in B.C.

Child day care

As of November 30, 1989, 2,862 centres were licensed under the Community Care Facility Act and Provincial Child Care Regulations to provide various types of day care services to a capacity of 39,502 children (including those assessed as having special needs). Additionally, many children are placed in legal unlicensed day care (fewer than three children not related to the operator) by parents, some of whom are subsidized by the MSSH. Precise numbers were not available as the Ministry does not distinguish between subsidized placements in licensed and those in legal unlicensed day care.

Children and youths placed out of their homes

The chart below represents an estimate of the numbers of children and youths who are placed in government operated, funded or regulated residential facilities during a one year period.

Residential services to children and youths with special needs, other than acute medical needs, are provided or funded by five provincial ministries. By administering authority, these services and estimated numbers of children and youths that are served are:

Ministry of Education

As of September 30, 1989, Jericho Hill School for hearing impaired children and youths had 41 students in residence. Precise statistics were unavailable regarding the numbers of children placed by their parents in boarding situations while attending school.

Ministry of Health

In 1988, according to a Hospital Survey of Psychiatric Care completed by Child and Youth Mental Health Services, there were 1,908 chil-

Estimated numbers of children and youths under 19 with special needs placed in government operated, funded or regulated residential facilities during a one year period

Administering or funding ministry	Estimated number of children/youths admitted, placed, receiving care	Year
EDUCATION		
Jericho Hill School	41	Sept. 1989
HEALTH		
Psychiatric wards in general hospitals	1,908	1988
Specialized mental health facilities for children	316	1988/89
Riverview & continuing care	22	1988
Forensic Youth Services	278	1987/88
Sunny Hill/Queen Alexandra/Anscombe House	749	1988/89
LABOUR AND CONSUMER SERVICES		
Alcohol & Drug Programs	250	1987/88
MSSH		
Family & Children's Services	12,511	1987/88
SOLICITOR GENERAL		
Corrections Branch	2,500	1988/89
TOTAL	18,534	

dren and youths under 19 years admitted to designated psychiatric facilities in acute care hospitals. This does not include children and youths admitted to paediatric or surgical beds with a psychiatric diagnosis; nor does it include the Maples Adolescent Treatment Centre in Burnaby (143 admissions), Jack Ledger House in Victoria (158 admissions) and the Lambrick Group Home in Victoria (15 admissions) during the 1988/89 year.

Of the 1,908 children and youths admitted to psychiatric wards in general hospitals, 662 cases (representing 12,028 patient days) were under 15 years of age and 1,246 (representing 19,537 patient days) were aged 15 to 19 years.

In 1988, 19 youths aged 16 to 18 years were placed at Riverview Hospital, a facility for mentally ill adults. Three youths between 0 and 19 years were placed in adult continuing care facilities.

During the 1987/88 fiscal year, the Forensic Youth Services inpatient assessment unit admitted 253 youths and 25 youths were placed in the Links program, a contracted residential care facility for juvenile sex offenders.

During the 1988/89 fiscal year, Sunny Hill Hospital, a rehabilitation and extended care facility in Vancouver, admitted 491 children with various types of handicaps. The Arbutus Society for Children in Victoria is a similar facility which admitted 258 children into the Queen Alexandra Hospital and Anscombe House facilities between April 1, 1989, and January 31, 1990.

Ministry of Labour and Consumer Services

Precise statistics for the number of children and youths placed in alcohol and drug treatment programs funded by the ministry were not available, but a ministry official estimated that, during the 1987/88 fiscal year, 250 youths were placed in residential treatment programs. Youths and adults were not distinguished in the estimated 120,000 persons who were considered unable to control their use of alcohol and drugs. One-fifth of this group utilized alcohol and drug services.

Ministry of Social Services and Housing

During the 1987/88 fiscal year there were 12,511 children and youths under 19 years in the care of the MSSH. 5,662 children and youths were admitted to care, while 6,052 were discharged from care during this period. As of March 31, 1988, there were 6,459 children and youths in the care of the ministry. 4,344 (67.3%) were aged 12 to 18 years; 1,119 (17.3%) were aged six to 11 years and 996 (15.4%) were under five years.

Foster homes were providing care for 3,114 (48%) of these children and youths and "subsidized resources" were providing care for 1,762 (27%). Other children and youths were placed in independent living situations (424 or 7%), adoption homes (324 or 5%), "free homes" (193 or 3%), special resources (146 or 2%) or with their parents (266 or 4%). There were 230 "runaways". The number of foster homes was not reported in the ministry's annual report, but during 1987/88 MSSH funded 967 resources for handicapped or emotionally and behaviourally disturbed children and youths. 79 of these resources were non-residential. Expenditures for foster care in 1987/88 were $25,771,255, and an additional $62,813,501 was spent on child care resources.

The adult capacity in 39 MSSH funded Emergency Shelters, including Transition Houses but excluding Safe Homes, in 1987/88 was 378. The number of children placed with their parents in these resources was not reported in the ministry's annual report.

Ministry of the Solicitor General

During the 1988/89 fiscal year, 1,025 youths between 12 and 17 years were placed in open or secure custody facilities operated by the Corrections Branch. 984 youths were placed in remand centres and 701 were placed, usually overnight, in police "lock-up".

In Residential Attendance Programs, the number of admissions to Bail Hostels was 363, and 650 full-time and 333 part-time admissions were reported in residential sentenced programs. The same youth may appear more than once in these statistics and a Corrections Branch official estimates that at least 2,500 *individual youths* were placed in correctional facilities during the 1988/89 fiscal year.

Since 1983/84, when the federal Juvenile Delinquents Act (JDA) was replaced by the Young Offenders Act (YOA), there has been a marked increase in the number of youths placed in custody. In 1983/84, the last year of the JDA, 400 youths were admitted to open or secure custody, compared to 1,025 in 1988/89. Branch officials estimate an 85% increase in admissions to sentenced custody since 1983/84, excluding admissions that were due to the increase in the juvenile age from 17 to 18 years in B.C.

Cross-ministry information systems

When these figures are placed alongside those of the education, public health, acute care hospital and day care systems, the significant scope of the provincial government's involvement in providing for the care and welfare of children and youths is apparent.

Each ministry has established its own information systems and hence figures are not available from government to indicate the precise numbers of individual children and youths who are placed during a given period in residential facilities operated, funded or regulated by the provincial government. Some statistical overlap exists because some children and youths are placed in facilities more than once during a one-year period. Certain facilities, such as emergency shelters including transition houses for women with children and some detoxification centres that admit youths, are not included in the statistical estimates presented.

The absence of comprehensive, valid and reliable data about special needs children and youths who receive services from state or state-funded agencies suggests the need for the development of non-identifying cross-ministry information systems designed to assist government in policy and program planning and resource allocations in the area of child, youth and family services. This matter is discussed later in this report.

PART B

The Eagle Rock Youth Ranch (1981–1989): A Case Example

This section of the report summarizes the scope and nature of concerns which arose with considerable frequency at the Eagle Rock Youth Ranch from its beginning in 1981 to its closure following the death of a 15 year old ward of the MSSH in a fire on February 14, 1989. Eagle Rock was a residential licensed facility for youths funded initially by the Corrections Branch and then by the MSSH. Just prior to the fire, the Ombudsman's office was aware of existing MSSH concerns about the program through a complaint investigation involving a youth who had been placed in the program. Preliminary inquiries by this office indicated that these concerns were serious and long standing.

Following the fatal fire, an investigation of Eagle Rock was initiated by this office. The primary intent of this investigation was to identify areas of apparent weakness in quality assurance mechanisms established by government ministries responsible for contracting and licensing child and youth care programs. The circumstances surrounding the death of the youth at Eagle Rock were not investigated by this office as they had been reviewed by the criminal justice system, the Coroner's office, the Regional Fire Commissioner's office, the MSSH and the Ministry of Health.

Reports of critical incidents at Eagle Rock

One traditional method of quality control used in residential programs is to monitor "unusual occurrences" or "critical incidents". These were found to have occurred with considerable frequency at Eagle Rock throughout the program's seven year existence. The sources of this office's information, summarized below, included:

- file documentation and investigative reports provided by the Ministries of the Solicitor General (Corrections Branch), SSH, and Health (Licensing Branch and Mental Health Services), and the Regional Fire Commissioner's Office,
- interviews with various public officials from the above authorities,
- interviews with the facility operator and three former staff of the facility,
- interviews with, and documentation provided by, local residents, referral agents, a parent of one youth and five former youth residents of the facility, and
- Court transcripts and psychiatric reports related to the trials of two youths, then 14 years old, who were subsequently convicted, one

of manslaughter and the other of second degree murder, in the death of the youth at Eagle Rock.

The planning and start-up phase

Eagle Rock opened in November 1981 as a three bed facility operated by a businessman and former R.C.M.P. officer with funding from the Corrections Branch. Branch officials recalled scaling down the owner's original proposal for a 16-bed facility for 13 to 18 year olds. A maximum capacity of six to nine youths was suggested by the liaison probation officer who pointed to the provisions of the School Act requiring that youths aged up to 15 years attend school. An educational program was not initially planned for Eagle Rock.

The program was intended to provide work experiences for youths in ranching, operating and maintaining mechanical equipment including chain saws, felling trees and ice fishing. The expected length of stay was to be eight to twelve months. Following "extensive group and one-to-one counselling" from house parent couples, including "a trained counsellor", youths were to become self-sufficient and to have "developed to the point that he/she has no trouble interacting with peers and adults". (Only males were subsequently placed at the ranch). Evaluation was to be "by way of two follow-up contacts with the course participants" six to 12 months after discharge. No evaluative documentation was maintained and government officials stated that follow-up was irregular and informal.

In December 1981, Eagle Rock became a six bed facility when the MSSH began placing youth in the program. The plan was to expand the facility to nine beds. At that time, MSSH policy, since changed, was to contract only with registered non-profit societies. In 1983, the owner submitted an application under the Society Act, and the written consent of the MSSH Superintendent of Family and Child Service was obtained for incorporation of the Eagle Rock Ranch Society. The plan to establish an active society with a volunteer board of directors was never implemented. The owner stated that it was more efficient to operate the program as a private facility.

In 1982, a saw mill was built at the ranch to provide youths with additional work experience. Contracts were established with government ministries and private companies to produce stakes. The first mill burned down after 30 days as the result of sparks igniting in a pile of sawdust during the night. No one was injured. Later, a second mill was built and operated until February 1989. Youths worked in the mill for up to five or six hours a day when not engaged in other ranch duties. When a pallet of stakes was produced, the working group of youths received $50 to divide among them for recreational spending.

Chronological summary of major incidents

- In December 1981, concerns about the planned youth program were expressed to MSSH and Corrections Branch officials through a petition signed by 34 residents in the immediate vicinity of Eagle Rock, representing 20 of the 22 households within a 10 to 15 mile radius of the facility. Subsequently, two public meetings were held. A mistrust of the owner, who did not live in the community, was expressed along with concerns about the type of youth who would be placed in the facility, the size of the facility, and government funds being provided to enable the owner to buy a ranch.

  Many residents who attended the meeting were reportedly reassured when informed by government officials that the program's capacity would be kept to between six and nine youths rather than the 12 to 16 originally suggested by the owner.

- The initial contract between Eagle Rock and the Corrections Branch was for the period from November, 1981 to March 31, 1982. During the initial months of operation, Branch officials became concerned that the program was not operating as originally conceived by them. Though documentation was sparse, they recalled that their decision not to renew the contract was based on concerns that included local resident concerns about the facility and the owner, the program's inability to recruit and retain skilled staff, and its failure to provide quality programs for youth.

- In March 1982, a written complaint about the program was received by Corrections Branch and MSSH officials from a former Eagle Rock employee who recommended that the program be closed down. He expressed concerns about
  - inadequate facilities and program,
  - untrained house-parents with little time off,
  - a lack of money available for activities,
  - a high staff turnover,
  - a lack of educational opportunities for youths,
  - the owner's treatment of youths, including an allegation that he was "slamming around" residents and "berating and cursing them".

  MSSH did not maintain a formal file system for contracted resources at that time, but a note on the district supervisor's informal file indicated that a letter of expectation would be sent to the owner stating that force was not to be used in dealing with youths. An MSSH official remembered addressing this matter with the owner who apparently agreed that some youths "pushed his buttons". The owner subsequently lessened his involvement in the program operations and left interventions with youths to his staff.

- On July 1, 1982, an article about Eagle Rock was published in the B.C. Farmways monthly newspaper. Two youths, aged 12 and 14 years, who were residents at Eagle Rock were named and photographed in the full page article without the required prior approval of the MSSH Superintendent of Family and Child Services. MSSH officials and the owner could not recall this article at the time of our investigation.
- In early 1983, a dispute arose concerning an invoice received by a referring MSSH office from Eagle Rock for services provided to a youth when he had been placed away from the facility into a less expensive six-week treatment program. This matter was later resolved through payment to Eagle Rock for "professional services" to the youth, including one-to-one counselling apparently provided by the owner. Additional concerns about the program were raised by officials from the referring MSSH region, including the lack of schooling at Eagle Rock, youths working for no wages, and staff with little or no child care experience or training.
- In March 1983, concerns about the care provided to a youth placed at Eagle Rock were raised by his referring social worker. This social worker had visited Eagle Rock because of concerns about the program raised by two colleagues and reported that
  - the youth was not in school, and a tutor had not been arranged as agreed to at the time of referral,
  - the youth had broken his shoulder while at Eagle Rock requiring an operation, but the youth's parents and social worker had not been informed at the time of the accident,
  - the youth's parents had been "treated poorly" when they visited Eagle Rock,
  - the youth was not at the facility when the social worker made a planned visit,
  - a "constant conflict" was apparent among the owner, staff and residents,
  - there was no evidence of a program, and staff were using the "method of embarrassing the child in front of his peers and felt that shaming him would cure the ailment" of bed-wetting.

  This social worker found Eagle Rock staff to be sincere and eager to learn, but lacking in basic child care skills.

- In February 1984, a local resident wrote a letter of concern about Eagle Rock to MSSH officials in Victoria stating concerns about
  - his home being broken into by youths,
  - the "very rapid turnover" of house-parents,
  - inadequate supervision of youths,
  - youths improperly clothed in freezing temperatures, and
  - youths being used as "cheap labour" in ranching duties and working in the mill for "minuscule wages".

  One of his main concerns was that youths "with sexual problems" might be placed at Eagle Rock.

  MSSH officials acknowledged problems with staff turnover resulting from "working conditions and low pay" but believed the program had improved. The complainant was told that youths with "sexual problems" would not be placed at Eagle Rock. According to the MSSH district supervisor, the break-ins at the complainant's home were done by boys placed by the Corrections Branch during the first winter of Eagle Rock's operation.

- In April 1984, a local resident and professional in the social service field documented a list of his concerns about Eagle Rock in a letter to MSSH and licensing officials. These concerns included the low quality of care, supervision and programming, the lack of safety standards in the sawmill, and the lack of training and experience of facility staff.

  The complainant wrote as follows:

  > A recent advertisement in a local paper advertising positions at the ranch indicated no experience or training necessary. This ad makes the unrealistic assumption that unqualified personnel could perform adequately in a care giving environment for special needs children.

  MSSH officials described the complainant as credible, but attempts to reassure him that improvements were being made to the program were not, according to the complainant, successful.

- In August 1984, in a report prepared for a Family Court Judge, a probation officer documented his concerns about Eagle Rock as follows:
  - inadequate staffing, supervision and programming,
  - inadequate screening procedures resulting in inappropriate referrals and placements, and
  - the number of delinquencies being committed by residents in the local community.

  The probation officer believed that if the situation at Eagle Rock was not remedied, the "prognosis" for the program was "quite dismal". The Judge requested a report from MSSH officials. In their response, MSSH officials pointed to the decreased incidence of delinquency related to Eagle Rock since the early months of the program when it was funded by the Corrections Branch. They recalled believing that the probation officer wanted to establish a containment centre which was not the mandate of the MSSH. The probation officer told us that this was not his intent.

  The probation officer's concerns, and the process through which he expressed them, were criticized by MSSH officials and Eagle Rock staff. As an officer of the Court, the probation officer felt justified in communicating concerns to the judge. He recalled trying, without success, to resolve his concerns about Eagle Rock with local MSSH officials. The probation officer's concerns were not shared by local MSSH officials who reported receiving favourable reports about Eagle Rock from referring social workers.

- In October 1984, an MSSH social worker who had been involved in staff training sessions at Eagle Rock documented concerns about the program including
  - the lack of communication skills and the use of inappropriate child management techniques,
  - the use of punishment techniques, verbal threats and foul language to discipline youths, contrary to MSSH policies, and
  - a staff tendency to engage in power struggles with youths.

- In July 1985, a MSSH district supervisor documented an "account" of issues raised by a former resident at Eagle Rock. Peer abuse was allegedly experienced by this youth during his stay at the facility, resulting in two knife wounds on his legs, a large dark bruise on his upper thigh, a broken bone in his hand, requiring a cast, and his shirt being cut by other youths with a drill.

  These incidents were alleged to have happened when staff were out of sight for short periods of time. The social worker described this youth to us as "tough" and often "eager to use his fists". There was no indication of staff negligence according to the local district supervisor who investigated these concerns. The social worker withdrew the youth from Eagle Rock because "a group setting was not appropriate". Our attempts to locate and interview this youth were unsuccessful.

- In August, 1987, a 13 year old resident had an accident while working in the sawmill. He lost his index finger in the saw and required reconstructive surgery. Reports about this accident indicated that Eagle Rock staff responded well to the emergency and proper documentation was completed. As a result of this accident, new safety measures were suggested by MSSH officials. These included the posting of written regulations and warning stickers placed on saws. A quiz was also suggested to test the residents' knowledge prior to working in the mill.
- In January 1988, a MSSH investigation corroborated allegations that two residents had been physically abused by a house-parent. The house-parent was fired by the owner as a result of the MSSH investigation.
- In 1988, a youth was refused admission to another, more specialized facility, because of his psychiatric problems. Eagle Rock agreed to place the youth with additional child care support from the MSSH and clinical support from the local mental health centre. The youth had previously been institutionalized, was diagnosed as a schizophrenic, and was clinically assessed to be a potential danger to himself and others. Based on their assessment of the Eagle Rock program and staff, mental health professionals were not optimistic about the facility's ability to respond appropriately to the special care and treatment needs of this youth. (MSSH officials later noted that preferred alternatives were not available or suggested by mental health officials).

  An offer of clinical consultation to the program was made to the owner by a psychologist from the mental health centre. This offer was not acted upon by the owner who had expressed concerns about government personnel being overly involved with Eagle Rock. He preferred that staff working at Eagle Rock be directly accountable to him.
- During the latter part of 1988, a serious conflict arose between the two sets of house-parents. One set of house-parents was let go by the owner. In January 1989, MSSH officials investigated and substantiated allegations of physical abuse by the house-parent that was retained. The Eagle Rock owner believed that this was a good employee. When told by MSSH officials that funding would cease if this house-parent was retained, the owner rehired the other house-parents and fired the one that had been the subject of the MSSH investigation. This employee later informed this office that he believed that he had been fired by the MSSH. The owner denied this and assumed full responsibility for the decision.
- In April 1989, the Ombudsman's Office received a call from a staff member at Eagle Rock who had recently resigned. During his brief tenure at Eagle Rock he said that he had been concerned about the following:
  - the owner's lack of response to staff concerns,
  - the low skill level of staff,
  - youths placed at Eagle Rock from distant communities,
  - the disturbed nature of youth being placed in a program with no treatment capacity,
  - incidents of peer intimidation,
  - misleading advertising "touting" Eagle Rock as a specialized resource, and
  - a serious fire set by a resident one week before the fatal fire of February 14 which had not been reported by the owner to MSSH or Ministry of Health licensing officials. (The owner later recalled asking his staff to complete a critical incident report form for the MSSH.)

  The complainant said that he had previously discussed safety concerns with the owner and MSSH officials and had suggested the need for nighttime staff to be awake when on duty. He also recalled a number of residents expressing their wish to leave Eagle Rock. MSSH officials did not recall being informed by this complainant about his concerns for resident safety.
- In November 1989, a neighbour of Eagle Rock who was involved in a long-standing dispute with the owner over water rights informed this office of his concerns about
  - children engaged in projects of an "unlicensed nature",
  - inadequate safety practices and equipment in the sawmill,

- youths being allowed to drive vehicles,
- staff using foul language with youths,
- the owner being allowed to "operate a profit-oriented business" and youths being used "as low paid help", and
- the lack of consultation with neighbours by public officials responsible for monitoring the program.

Anecdotes of some youths' experiences at Eagle Rock

Tracing former residents of Eagle Rock proved to be a difficult task. During the early years of the program, the MSSH did not maintain an official file on the program. MSSH central record-keeping systems did not maintain a single list of all residents placed in the program. The fire destroyed records kept at Eagle Rock. We identified seventeen former residents whom we would like to have interviewed.

- Five youths were interviewed.
- Two youths were dead, one as a result of a recent airplane crash and another was reported to have been "knifed to death in a back alley" in Vancouver.
- One youth was reported by his social worker and caregivers to be in a fragile emotional/psychological state where an interview might be unwise and unhelpful;
- One youth was preparing for a Court appeal of his conviction in the death of a peer at Eagle Rock, and his lawyer advised against an interview;
- One youth had moved to Eastern Canada with his parents;
- Four youths were believed by their (former) social workers to be incarcerated in the adult or youth correctional system, but could not be traced;
- Three youths, now adults, were no longer in MSSH care, and their whereabouts were unknown to MSSH officials.

Residents' perspectives of the Eagle Rock program were elicited from interviews with youths as well as caregivers and referring social workers with whom the youths spoke about their experiences. Additional sources of information included MSSH file reviews and Court transcripts related to the trials of the two residents subsequently convicted in the death of a fellow resident.

Interviews conducted with ex-residents were planned with due sensitivity to their current situation. The potential impact of an interview by our office was assessed with MSSH social workers and, in some cases, caregivers prior to proceeding. Youths were informed of the voluntary nature of the interviews. In two cases we agreed not to meet with youths because of legal or emotional considerations.

Four of the five youths interviewed were articulate in describing their experience at Eagle Rock. One youth, because of his developmental disabilities, was less so. The five youths interviewed by this office were at Eagle Rock between 1986 and 1989. Anecdotal information provided by these youths, reinforcing concerns about the program expressed by others, included

- The existence of serious conflict between two sets of house-parents. This appeared to result in significant inconsistencies in program routines and supervision. Youths described a program that changed dramatically from week to week depending upon which house-parents were on duty. Their observations reinforced to this office the fundamental importance of skilled, stable staffing and consistency in child and youth programs.
- Significant variance in the nature and extent of youth contacts with parents or guardians and their home communities. Pre-placement visits by youths, parents or guardians, social workers and probation officers were not routinely required. After placement, some youths apparently had minimal contact with their referring social worker while others had frequent contact. In part, this may have related to whether a youth was referred from a local or distant community.
- Limited organized social and recreational activities reportedly based on funding availability and varying levels of staff motivation. Youths reported television as a major evening activity. Prohibited activities such as smoking in bedrooms and "raiding the fridge" were reported to take place after staff retired for the night. We were told that youths removed batteries from smoke alarms

to prevent detection of smoking. While a number of Native youths were placed in the program, culturally sensitive activities were not in evidence. (The owner informed us that efforts to establish links with local Native people were not successful).

- Ranching and sawmill activities that were inadequately supervised. Youths reported a shortage of safety equipment in the sawmill where they often worked without adult supervision. Youths said that they were permitted by certain staff to drive vehicles, use chain saws and shoot hunting rifles. The ex-resident who lost a finger in the sawmill accident still experiences pain, especially during cold weather. His foster parents, while admiring his non-complaining nature, wondered why the youth had not been compensated for the injury. The Ombudsman's office has initiated a separate investigation of this concern.
- The belief by some residents that the owner was "making money off the kids" by having them develop his ranch and work in the sawmill without fair monetary compensation. Youths said that they rarely saw the owner.
- Youth questions about the appropriateness of the mix of residents placed in the program. One youth said that two developmentally disabled youths were often picked on by their peers. He said it was "not very smart" to place youths "who behave like six year olds" with "streetwise kids".
- The placement of some youths in the program against their sometimes strenuous objections. According to local MSSH officials, the majority of youths benefited from the program. But some youths clearly did not wish to be there. In one case, a psychiatric report to Court stated that one of the youths, subsequently found to be responsible for setting the fire, was

> consistent in elaborating his motivation as essentially feeling very angry with the facility and the staff and in particular wanting to go home, and to ensure that he would not be returned, he set the fire.

MSSH officials said that they were informed about this youth's wish to leave Eagle Rock just before the fire and plans had been made to move him.

- School-aged youths not routinely enrolled in an educational program. According to one youth, no one mentioned school to him during his first year at the ranch. He was then 13 years old. This suited him as he preferred to work on the ranch. He said that he did enrol at the local school during his second year in the program.
- Concerns about the adequacy of clothing and food. Three youths said that their social worker had sent them money for clothing which was not purchased for them. Two youths said they were fed beans a lot by one set of house-parents and if they complained, one house-parent threatened to stop cooking meals.
- Physical altercations between residents and, on occasion, with staff, which apparently occurred with some frequency. This did not appear to carry great significance for the youths we interviewed. Two youths said that they were more upset with "mind games" played by staff than with the "physical stuff".

At the conclusion of our interview, one youth told us that he thought the ranch program was a good idea but that "people, kids and staff, did not work together to make it work".

One impression formed through interviews with ex-residents at Eagle Rock, reinforced through interviews with professionals and from other investigations by this office, is that youth-in-care have low expectations about the manner in which they should be treated by adults in authority. Parents and professionals may be appalled by a staff person punching a resident, by residents being allowed to engage in potentially hazardous activities without adult supervision, or by a 13 year old not being encouraged to enrol in a school program. The youths who we interviewed were not overly concerned with such matters.

The low self-esteem, disabilities and previous life histories of many children and youths with special needs may explain their minimal expectations about what constitutes fair treatment at the hands of adult authority figures. Reasonable safeguards, including advocacy, are then essential to protect their rights to appropriate services and fair treatment.

Standards setting, monitoring and enforcement

Eagle Rock opened its youth program in November, 1981. A license application to the Provincial Child Care Licensing Board was made in July, 1982. An interim permit was granted by the Board in October, 1985. A license to operate a residential child care facility for nine residents was granted on December 4, 1986 — five years after opening. A combination of events led to this significant delay in obtaining a license pursuant to the requirements of the Community Care Facility Act and Provincial Child Care Regulations. This legislation establishes minimum standards of health, safety and care in designated community care facilities for children, youths and vulnerable adults.

Confusion about licensing exemptions

Corrections Branch and Ministry of Health licensing officials believed that Eagle Rock was exempt from the requirements of the Community Care Facility Act. Section 1(g) of this Act states that "a home designated or approved as a youth containment centre" under the Correction Act (Section 34) is not considered to be a community care facility and therefore is exempt from licensing requirements. Eagle Rock was, however, never designated or approved by the Commissioner of Corrections as a youth containment centre in accordance with Section 34 of the Correction Act.

When MSSH assumed funding responsibility, licensing officials recalled assuming that Eagle Rock was a foster home designated under the Family and Child Service Act and, therefore, exempt from licensing requirements. No formal procedures existed in MSSH policy for the designation of a foster home, but MSSH officials stated that Eagle Rock was never considered by them as a foster home. According to MSSH officials, licensing was a matter between the owner and Ministry of Health licensing officials. They recalled supporting the need for licensing with the owner.

The owner informed this office that he did not place great importance on matters of licensing. He cited delays of up to five years in obtaining a water license as an example of how licensing applications can be delayed "by bureaucrats".

A license application was first made by Eagle Rock in July 1982, eight months after the program began. In December 1982, the Medical Health Officer recommended to the Provincial Child Care Facilities Licensing Board that an interim permit be approved for a maximum of nine residents "provisional upon changes outlined by the Public Health Inspector to the owner".

In January 1983, the consultant to the Child Care Licensing Board requested that the Medical Health Officer forward a fire safety report before the Provincial Child Care Licensing Board considered recommending an interim permit.

In June 1983, a Social Assessment form, designed to assess the suitability of the owner's qualifications, was prepared by MSSH officials for the Ministry of Health. The assessment noted that this type of facility was in great demand. The owner was assessed to be "personally suitable to supervise the program and to care for the children" and had knowledge in "maintaining a remedial behaviour program through Ranch lifestyle". The owner/operator was reported to have "nurse training, basic child training, trades in carpentry, electricity, husbandry, farming, ranching, crafts, outdoor activities". The initial license application form, completed by the owner, stated that he "has no formal training as a child care worker but has years of practical experience working with people".

In July 1983, the City of Kamloops Fire Chief informed the Medical Health Officer that the facility was outside the city limits. The Regional Fire Commissioner inspected the facility on August 23, 1983.

Delays in meeting licensing requirements

On September 13, 1983, the Regional Fire Commissioner wrote to the Eagle Rock owner and outlined eight changes that required remedy "in the interests of life and safety for the persons who occupy the premises". In a telephone discussion with the Regional Fire Commissioner on July 18, 1984, the owner indicated that "some renovations were underway". The Regional Fire Commissioner asked if these renovations related to his recommendations in the letter of September 13, 1983. The owner stated that he had never received this letter although it had been mailed to the address provided by the owner and had never been returned to the Office of the Regional Fire Commissioner. A duplicate letter was sent to the owner on July 18, 1984.

In October 1984, the Regional Fire Commissioner wrote to the owner requesting that he confirm in writing when the work, as set out in the letter of September 13, 1983, was complete. On February 4, 1985, a letter from the owner to the Regional Fire Commissioner indicated that all work had been completed at the facility.

On April 17, 1985, an inspection by the Regional Fire Commissioner found that the facility did not meet the requirements for fire safety and serious concern was expressed that, notwithstanding written assurance from the owner in February, the required work was not yet completed.

On April 30, 1985, the Medical Health Officer wrote to the owner stressing the seriousness of his non-compliance with licensing provisions. A copy of this letter was sent to MSSH officials, the Regional Fire Commissioner, the Child Care Licensing Board and the Adult Care Licensing Board, as the owner also operated other facilities for handicapped adults.

On May 7, 1985, the Regional Fire Commissioner wrote to the owner with the results of his April 17 inspection at Eagle Rock. Remedial action was requested and MSSH and licensing officials were notified of concerns.

On June 21, 1985, the Medical Health Officer asked Licensing Branch officials for "advice or directive" regarding the owner's non-compliance in "matters of safety and fire hazards". The non-compliance was seen to be a "long standing digression from adherence to regulations" by the owner who had been "repeatedly informed in writing as well as verbally".

On July 24, 1985, the Medical Health Officer wrote to the MSSH regional manager requesting that funding be terminated immediately for "this unapproved and unlicensed facility". This request was made based on the owner's "lack of cooperation and reluctance to comply with the requests of fire and health in the matter of licensing". On July 30, 1985, MSSH officials wrote to the owner giving one month to comply with licensing requirements. Failure to comply, he was told, would result in termination of funding.

In August 1985, two years after the initial fire safety inspection, the Regional Fire Commissioner confirmed the satisfactory completion of fire prevention requirements at Eagle Rock. The owner was reminded that routine inspections of fire safety equipment and fire drills must be carried out and documented.

Documentation of fire safety measures was not available to this office as the fatal fire of February 14, 1989 destroyed all files and documents stored at Eagle Rock.

In August 1985, licensing officials denied the owner's request to increase the facility's capacity to 10 residents and to place three residents in one bedroom. In September 1985, licensing officials formally withdrew their request that MSSH terminate funding for Eagle Rock.

In October 1985, two years and three months following the initial application, the Provincial Child Care Facilities Licensing Board issued an interim permit to Eagle Rock to operate a residential child care facility for up to nine residents for the period October 3, 1985 to April 3, 1986.

From interim permit to full license

In July 1986, the Medical Health Officer wrote to the owner citing a number of unsatisfactory conditions at Eagle Rock including:

- three residents sleeping in one non-approved bedroom,
- use of "a storage room" as a bedroom (the skylight was not viewed as a satisfactory means of egress),
- the owner/operator being rarely on site,
- the lack of documentation of staff first aid certificates and TB X-rays,
- no proof of sufficient liability insurance being held,
- concerns about nutrition, food storage and water supply, and
- the need to keep medications in locked storage.

A second and final interim permit was recommended for a maximum of six residents contingent upon a person other than the owner being named the "person in charge". In July 1986, the owner wrote to licensing officials asking that their recommendations be changed back to a maximum of nine residents. Those residents who had been sleeping in unapproved rooms had, he said, since been moved back to approved bedrooms and actions were reportedly underway to correct water system problems. A new "person in charge" was also named.

In October 1986, MSSH officials assessed the new "person in charge" for licensing officials. His qualifications included raising two adopted children, fostering 12 children over a 25 year period, sawmill logging, farming, and a St. John's first aid license". The MSSH social worker who completed this assessment suggested that staff at the facility should "attend one or two workshops per year on parenting, attend foster parent meetings or at the very least receive a foster parents' magazine".

On December 4, 1986, four and one half years after the initial application, the Provincial Child Care Licensing Board issued a license to Eagle Rock for the operation of a residential child care facility for up to nine residents. Subsequent licensing inspections at Eagle Rock took place in June 1987 and December 1988 and resulted in "satisfactory" findings. However, suggested changes included the need to maintain medication records, for periodic fire drills, to update records of immunizations, to improve first aid equipment, to improve the water system, to improve general housekeeping, and encouragement of efforts to provide basic education programs, individual care plans and a program policy manual.

In April 1989, following the fatal fire, licensing officials requested a copy of the MSSH internal report on the incident as the owner was reported to be expressing an interest in rebuilding the facility under the existing license. Subsequently, the owner and MSSH officials informed us that neither party had any intention of continuing to operate, or fund, Eagle Rock.

MSSH decision to permit an increase in capacity

In the fall of 1982, MSSH limited the number of residents placed at Eagle Rock to nine. The Eagle Rock owner believed that "a limit was unnecessary and that the Ranch could accommodate more children". Licensing officials had recommended a license, ultimately granted, for a maximum of nine residents.

In February 1983, a note on MSSH files indicated that there were "ten boys in the place". The MSSH district supervisor acted to correct this situation when he found out that a social worker had made this arrangement "under pressure" from the owner. In December 1988, MSSH officials formally approved the owner's request that a tenth resident be placed for a period of two weeks but not to extend beyond one month when discharge plans had been confirmed for a resident. Licensing officials were neither consulted nor informed of this decision by the owner or MSSH officials.

The reason for the owner's request was that an empty bed constituted a loss of income for a program which was budgeted to break even with 100% occupancy. A time lag normally exists between the discharge of one resident and the placement of a new resident. MSSH officials informed this office that the placement of a tenth resident was seldom necessary as the average occupancy rate was about 88%. In fact, during the latter stages of the program MSSH officials were acting to reduce the number of youths placed at Eagle Rock because of concerns about the program.

Screening and referral procedures

On at least two separate occasions, the owner bypassed protocols established with the liaison MSSH office and directly recruited youth referrals from other MSSH regions. Problems resulted.

In one case, it was reported that a father transported his child to Eagle Rock but the house-parents had not been informed of the owner's agreement to admit the youth. The youth was promptly transported back to his home community hundreds of miles away. In another case, the per diem rate was reportedly billed to the MSSH referring region for eight days prior to the youth actually arriving at Eagle Rock.

The two youths convicted following the death of a fellow Eagle Rock resident in the February 14, 1989 fire were among a number of residents that appeared to this office as inappropriately placed in the program. Both had histories of fire setting which were not immediately known to Eagle Rock staff or local MSSH officials. Referral information was often reported to be delayed or incomplete. In one case it took three months for a youth's file to be transferred from the referring MSSH office to the local MSSH office responsible for the contract.

The owner's concerns

As related to this office in two interviews and from correspondence in MSSH files, the major concerns of the owner during his eight years operating Eagle Rock can be summarized as follows:

Funding difficulties

During the start-up phase of the contract, Corrections Branch officials recalled the owner requesting capital funds for the purpose of building the facility. These funds were not made available.

The owner described himself as an entrepreneur and free enterpriser. He initially believed that he could develop a resource for youth and also obtain a profit from the operation of the ranch. However, he subsequently found the funding levels for the program to be consistently inadequate. This was cited by him as a major factor leading to continuous difficulties in recruiting and retaining skilled staff. Local MSSH officials agreed.

MSSH officials also believed that many complaints about Eagle Rock resulted from unrealistic expectations by referring agents given the funding levels available. The program, they said, was not intended as a treatment resource, which was not the mandate of the MSSH. Soon after the program started the government restraint program restricted percentage increases available to contracted resources. The extent to which the funding levels may have contributed to problems at Eagle Rock was not determined by this office. Annual audited financial statements were neither submitted by Eagle Rock nor required by local MSSH officials. We understand that MSSH was conducting a financial audit subsequent to the fire.

Frequent requests by the owner for additional funds were responded to sympathetically by local MSSH officials, and incremental increases were provided but, according to the owner and local MSSH officials, they remained inadequate to meet the specialized needs of youths being placed in the program. Options considered by the owner were raising the per diem rate, increasing the number of residents, or reducing staff and programs.

Senior MSSH officials acknowledged that the facility had been underfunded from the outset, in part as a result of the owner's "inexperience and lack of knowledge of the cost to operate such a resource".

Eagle Rock was not funded to provide a high level of specialized care, nor was it mandated to provide treatment. But the admission criteria remained unchanged though more frequent placements of younger youths with severe emotional and behavioural problems occurred. The owner's unwritten policy was that, if the funding authority referred a youth, then Eagle Rock was obliged to place the youth. The owner stated that "you don't bite the hand that feeds you". Some Eagle Rock staff did not agree with this policy because they did not have the skills or resources to deal with youths exhibiting serious emotional, behavioural or psychiatric disturbances.

Guaranteed funding and "marketing" beds

The owner stated that the program was dependent upon 100% occupancy to break even. The actual occupancy rate was reported by MSSH officials to have averaged 88%. Four local region beds were "guaranteed", meaning that the per diem rate would be paid to Eagle Rock whether or not a youth was in residence. For funding reasons, the number of beds available for local regional use was later reduced to three. The remaining beds were available to other MSSH regions and payment was made only when a youth was actually in residence.

According to the owner, in order to break even, out-of-region beds had to be "marketed on a free enterprise basis". He became dissatisfied with the "marketing" efforts of local MSSH officials and so he directly recruited referrals from MSSH district offices in other regions. As indicated earlier, this was seen by local MSSH officials as a contravention of the referral and screening procedures agreed to with the owner. The owner believed that direct recruitment by him was a necessary and sensible business approach.

Payment in arrears

In March 1984, the MSSH Deputy Minister approved Eagle Rock as a "Specialized Resource — Non-Handicapped". On April 3, 1984, the owner signed a Specialized Residential Agreement contract with MSSH officials.

On May 1, 1984, the owner wrote to the MSSH regional manager expressing concerns about the new arrears payment system that had resulted from the recently signed contract renewal. This new system of payments, he said, would result in an immediate reduction in staff and the closure of the sawmill.

MSSH officials believed that they had gone out of their way to meet the owner's financial needs and that every time they did, further problems and demands resulted. The MSSH district supervisor advised the owner that the traditional method of funding in arrears would not be changed but agreed to a transition period over several months in order to ease cash flow problems. This had been the position of the ministry during the contract negotiations of April 1983.

Staffing

MSSH officials believed that it would have been unfair to place higher expectations on the program and staff without increased funding. The owner believed that staff with proper qualifications were, in his experience, less effective than those without formal training, but who cared about youth. He believed that Eagle Rock, especially during the early years, was one of the better facilities for youth.

Problems in the later years were, according to the owner, in part related to too much involvement and interference by MSSH social workers. He expressed concerns about the lack of money available to train staff and said that he had repeatedly raised this concern with MSSH officials. MSSH officials did not recall being asked specifically for increased funds to train staff during contract negotiations. MSSH officials recalled the owner being reluctant to accept their periodic offer for ministry staff to provide training sessions with Eagle Rock staff.

Licensing delays

The owner believed that he was accountable to MSSH as the funding agency and not to licensing officials. He said that had MSSH officials come to him earlier with concerns about licensing delays, he would have acted promptly to remedy any concerns. He viewed licensing as a bureaucratic process that had little relevance to the Eagle Rock program. In his words, "licensing does not pay the bills". He said that it would have been simpler to deal with only one agency of government.

Local MSSH office investigation of Eagle Rock

As indicated earlier, the findings of a January 1989 investigation by local MSSH officials resulted in a house-parent being dismissed. Based on concerns about Eagle Rock in the local MSSH office, a broader investigation of the Eagle Rock program was also carried out at that time and found the following:

- Initiation rites were practised, encouraged by a house-parent and, on one occasion, a resident was tied up and hit by another resident;
- Youths were allowed to drive vehicles without a driver's license;
- Youths worked in the saw mill for $8.00 a day without proper safety equipment and adult supervision;
- Youths were allowed to use guns for target practice until someone allegedly "shot a hole in the boat";
- A lack of documentation existed when medications were administered to youths;
- Youths were verbally "downgraded" by house-parents;
- "Outside people" worked at the ranch without undergoing criminal record checks;
- Unsafe drinking water from the well was "remedied" by placing a filter on only one of a number of taps;
- House-parents had no professional skills in dealing with adolescents and little in-service training;
- One youth viewed Eagle Rock as more "prison oriented" than the Youth Detention Centre;

- There was a lack of fresh fruits and vegetables, and the same menus were being served day after day;
- Youths were inadequately clothed;
- Staff discontent with the owner was evident.

Current efforts to remedy past problems

Local MSSH officials reviewed the facts gathered during the Ombudsman investigation and found that they accurately portrayed the events between 1981 and 1989 but did not fully reflect the positive experiences of many youths in the program. They concurred that the Eagle Rock program was "a marginal one" largely because of funding inadequacies. While cross-ministry issues were seen to be a continuing area of concern, current efforts within the MSSH to improve service delivery were identified by these officials to include

- increased awareness of the Ministry of Health licensing role and functions and more effective cross-ministry communication and coordination in dealing with licensed facilities funded by MSSH. Grey areas were still seen to exist in defining special care foster homes with three to six beds which may, or may not, require licensing,
- efforts to define and implement standards for residential and child protection services within the MSSH,
- ministry reorganization providing greater funding flexibility at the local level and more social work staff to district offices in this area of the province,
- the trend to develop smaller alternate family resources,
- the establishment of an internal review intended to improve contracting practices.

Eagle Rock was seen by MSSH officials as a needed resource. One senior official wondered where youth would have been placed if Eagle Rock had not been so willing to take them. Significant social work support was provided to the facility, not always appreciated by the owner, in part because of continuous problems that existed. While not documented, verbal evaluations of the program were, according to MSSH officials, periodically undertaken. A significant number of youths benefited from placement at Eagle Rock according to their referring social workers.

The impression left with this office was that local MSSH officials were seriously concerned about being left to fund a marginal but much needed facility in large part because of the lack of more appropriate resources available in the Corrections Branch, Child and Youth Mental Health Services, or other MSSH regions (most notably the lower mainland).

Regulatory standards not adequately enforced

Cumulatively, the scope, seriousness and continuous nature of concerns about Eagle Rock, expressed by diverse and apparently credible parties, led us to question why this facility was permitted to operate for more than seven years without prompt and coordinated action being taken by contracting, licensing, and fire safety authorities, either to enforce the owner's compliance with legal and contractual obligations, or refuse a license, withdraw funding and cease referring youths.

A considerable level of agreement was apparent when we sought reasons for the continued existence of a program about which there had been long-standing and largely unresolved concerns.

Lack of appropriate resource continuum

The province-wide demand for residential resources for special needs children and youths is not matched with an appropriate continuum of accessible services. Traditional foster homes were not appropriate for many youths placed to Eagle Rock which was appreciated for accepting difficult youths into a low-cost program. In some cases, the alternatives may have been more inadequate because of the shortage of appropriate specialized residential resources. The extent of concerns about Eagle Rock was not always known to referring agents, particulary those from other regions of the province.

Licensing, contracting and referral agency relationships

Licensing requirements were not well understood or appreciated by the funding and contracting agencies and communication was poor among MSSH, Corrections Branch and Ministry of Health officials. While in many sectors a business is not permitted to begin operation without a license, this is often not the case in the field of residential child and youth care. Licensing officials and Fire Commissioners are faced with a dilemma when retroactively asked to inspect already operating facilities. To recommend closure of a facility because it fails to meet regulatory minimum standards may result in vulnerable clients being removed with no available residential alternatives.

Inadequate contracting

The original concept of developing a working ranch program for youths was seen by many as a viable one had the necessary planning, screening, monitoring and evaluation procedures been implemented through the contract. Weaknesses in establishing, monitoring and evaluating contractual expectations appeared to result in the program "drifting" for some years based on referral demand. While MSSH officials believed that many residents benefited from the program, the accuracy or lasting impact of these impressions could not be confirmed by this office as no formal, documented evaluation of the program existed.

Program remoteness

Many youths were placed at Eagle Rock from distant communities, especially the Lower Mainland, where appropriate local resources reportedly could not be found or accessed. Some referring social workers or probation officers only knew of Eagle Rock through brochures and telephone contacts. During the course of our investigation, a number of professionals expressed concerns about developing residential programs in relatively remote areas making them difficult to monitor and evaluate. The practice of removing children and youths from their home communities poses significant case management difficulties. Meaningful contact with parents, social workers and communities is seriously restricted. According to MSSH officials, this practice is now less common.

Crisis management

Serious concerns about Eagle Rock frequently arose. The local MSSH office devoted considerable time and social work resources in support of the program. A number of staff hired by Eagle Rock appear to have genuinely cared for youth even though they may have seen themselves as poorly equipped to respond to the special needs of many youth placed there. When serious problems arose they may have been temporarily responded to, but lasting resolutions were often not apparent to this office.

No formal complaint resolution mechanisms

Informal attempts to lastingly resolve concerns and conflict at Eagle Rock were often ineffective. Formal and communicated complaint resolution mechanisms did not exist to address concerns that may have arisen from youth residents, parents, facility staff, referring ministry staff, officials from non-funding agencies, or from local community residents.

Major findings from Ombudsman investigation of Eagle Rock

The following major findings resulted from our investigation of Eagle Rock:

1. That Eagle Rock was funded by the Corrections Branch of the Ministry of the Attorney General and the MSSH between November 1981 and October 1985 while the facility was operating in contravention of the Community Care Facility Act and Provincial Child Care Facilities Regulations.

The risk to children and youths who are placed in a residential facility which does not meet minimum legislated health, safety and care standards is self-evident.

In 1981, Eagle Rock was not designated by the Commissioner of Corrections as a youth containment centre and was not, therefore, exempt from the licensing requirements of the Community Care Facility Act. Youth correctional facilities not designated or approved as youth containment centres under the Correction Act are required to comply with the same licensing regulations that apply to similar facilities operated or funded by other ministries. However, prior to 1989, there was conflict between the Act and the Provincial Child Care Regulations (section 52) which defined Residential Care for Children to mean

> ... the provision of care... for children under the age of 19 *placed in a facility by the Ministry of*

> *Human Resources*, to receive 24 hour care and supervision. (Our emphasis)

In November 1989, the Provincial Child Care Regulations were amended to remove specific reference to a single ministry. Corrections Branch officials have informed this office that it is now clear that their contracted facilities are subject to licensing provisions and we have been assured that appropriate actions are being taken to ensure compliance.

2. That there was an unreasonable delay of more than four years between Eagle Rock's application for a license to operate a residential child care facility and the granting of the license in accordance with the requirements of the Community Care Facility Act and Provincial Child Care Regulations, during which time the facility was permitted to continue operations.

This constitutes an unreasonable length of time to ensure that a facility is operating in compliance with legislated minimum health, safety and care standards. The Eagle Rock owner's refusal to comply expeditiously with licensing requirements should have been responded to more promptly, more forcefully and in a more coordinated manner by officials of the contracting, inspecting and licensing authorities.

3. That the original delay in Eagle Rock's application for a license was, in part, due to the lack of clear procedures within MSSH policy for designating foster homes in a manner that clearly distinguishes them from facilities that are required by the Community Care Facility Act to be licensed.

Eagle Rock was funded by the MSSH for approximately eight months before an application for licensing was made. Licensing officials recalled assuming that Eagle Rock was designated by MSSH as a foster home and, therefore, exempt from licensing requirements. In this respect, licensing officials were acting on a mistake of fact.

4. That comprehensive and sufficiently detailed contracts were not established by MSSH officials with the Eagle Rock facility.

a) Failure to specify expectations in the contract

Ministry policy (Purchase of Service Manual, July 1986) states that "clear and sufficient information" about the ministry's expectations must be provided to the contractor (2.7) and that "service expectations must be defined in a way which allows results to be measured". (3.3.2.) "Clear measurable goals and expectations" are required by MSSH policy along with a regular review of services and an evaluation of "the results of service to assess their effectiveness in assisting clients to achieve goals." (2.5)

The contract is the fundamental tool for outlining mutually agreed-upon terms governing the relationship between the contractor and the statutory funding authority. When used appropriately, the contract provides an opportunity to establish accountability and quality assurance mechanisms. Detailed, measurable expectations were never adequately defined by MSSH officials through the contracting process to include, for example,

- a definition of the type of youth to be placed,
- referral and screening procedures,
- the program's philosophy, objectives and methods,
- education and training requirements,
- staff/youths ratio and levels of supervision,
- staff qualifications and training,
- health and safety procedures,
- methods of discipline to be used,
- critical incident reporting procedures,
- monitoring, evaluation and review procedures,
- resident / parent / other complaint procedures.

A comprehensive and sufficiently detailed planning and contracting process from the outset could have resulted in

i) the development of a realistic operating budget which defined measurable program standards and expectations based on the defined needs of youths to be served,

ii) a decision that the program, as intended, was not feasible based on funding availability, or

iii) a decision to modify the program and the target population to be served in accordance with funds available within the ministry's regional budget.

b) Annual recontracting did not include formal review or evaluation

The annual recontracting process provides the funding authority with an opportunity to review, evaluate and, when necessary, redefine the program based on both the program's performance measured against stated expectations, and current ministry resource needs and priorities.

The profiles of youths referred to Eagle Rock reportedly changed over the years. The program was not formally adapted in response to changing referral patterns (although during the later stages of 1988 local MSSH officials said that they were actively attempting to address this issue). As a result, a number of seriously disturbed youths were placed in a residential facility that was poorly equipped to respond to their emotional, psychological, social and educational needs.

c) Inadequate screening, referral and enforcement procedures

Referral and screening procedures were inadequately defined and enforced through the contracting process. Informal protocols were bypassed by the owner who directly solicited youth referrals from other MSSH regions. As a result, planning for at least one youth was seriously disrupted.

While not formally incorporated within the contractual agreement, a screening protocol developed between MSSH and Eagle Rock stated that youths with a history of fire setting were inappropriate for placement at Eagle Rock. In one case, referral material on a youth made no mention of his brief history of fire setting. The youth was placed at Eagle Rock. Three months later, the youth's file arrived at the local district office.

This youth set a fire at Eagle Rock on February 8, 1989. He has since been convicted in adult court as a result of the fire set on February 14, 1989. (He had no prior record of criminal conviction prior to his placement at Eagle Rock.) The other youth charged and convicted in the death was also reported to have a lengthy history of gas sniffing and fire setting prior to his placement at Eagle Rock.

In 1987, a 15 year old youth was placed at Eagle Rock against his strenuous objections. This youth's documented history included an acknowledged sexual assault on a two and one-half year old child. The youth was placed at Eagle Rock notwithstanding assurances by ministry officials to a local community resident that youths with a history of sexual assault would not be placed in the facility.

d) Inadequate criteria for the designation of specialized, provincial programs

In April 1984, MSSH officials signed a Specialized Residential Agreement contract with Eagle Rock. A majority of beds was assigned for use by other MSSH regions and hence youth were placed at Eagle Rock from all over the province.

The decision by MSSH officials to designate Eagle Rock as a "specialized" provincial facility appeared to be primarily based on financial considerations. From a program perspective, Eagle Rock did not appear to merit a "specialized" designation which is defined in MSSH policy as "a service which has been specifically designed to meet the needs of a certain target group" (F&CS Policy Manual, Sec. 14, October 1983). As previously noted, neither the program nor the target population was clearly defined in the MSSH contract with Eagle Rock.

Although literature produced by Eagle Rock stated that the facility "provided individual counselling resulting in positive behavioral change", there was no evidence to substantiate this claim. In fact, evidence would indicate that the majority of staff hired by Eagle Rock did not have appropriate counselling skills or training.

Guidelines for the designation of a provincial facility do not exist in ministry policy. The government's stated philosophy is to deliver services, wherever possible, at the local community level. Provincial facilities are usually developed because the cost of providing highly specialized services at the local level is prohibitive when considering the number of persons requiring that service.

This office recognizes that the intent of MSSH officials was to provide additional funding to Eagle Rock through a Specialized Residential Agreement. More rigorous policy guidelines that reflect programming and quality of care considerations should, however, be required when ministry officials are considering the designation of a facility as specialized and provincial in scope.

e) No audited statements required by the funding authority

Only unaudited financial statements were provided to MSSH officials by the Eagle Rock owner. MSSH officials did not request audited statements as they saw no reason for them. The owner believed that the cost of obtaining audited statements was not warranted.

Section 8(b)(xi) of the Specialized Residential Agreement signed by MSSH officials with Eagle Rock requires that "annual audited statements" be provided to the ministry "no later than May 31st each year". This office has been informed by MSSH officials that an internal ministry financial audit of Eagle Rock is currently being carried out.

f) Insufficiently detailed expectations about the required qualifications of the program's operator and staff

The Eagle Rock owner had little or no directly related experience or relevant training when he first sought government funding for the operation of Eagle Rock. The inexperience and lack of formal relevant training of many of the staff hired to work at the facility is well documented and led to numerous expressions of concern from various sources.

Government policies are clear with regard to the "arm's length" relationship which exists between the contractor and the funding authority. The contractor is responsible for service delivery and personnel matters. However, MSSH policy (Purchase of Service Manual, Section 4.8) recognizes that

> It is essential to develop a list of criteria against which all submissions (for contracted child care facilities) will be assessed.

The quality of services provided to children and youth depends, to a large extent, on the skill, experience and qualifications of facility operators and staff. MSSH contracting guidelines currently state that a facility operator should have

i) the motivation to serve the best interests of clients,

ii) experience in providing similar services in the past, and

iii) management experience and ability in the business aspects of the service.

The ministry also expects the facility operator to develop personnel policies to ensure that staff are qualified, have undergone a criminal record check, receive adequate supervision and training, and are required to maintain confidentiality (Purchase of Service Manual, 4.8.3., July 1986).

As earlier indicated, Eagle Rock advertised for child care staff stating that no prior training or experience was necessary. In-service training programs were not routinely provided to staff. Lines of supervisory accountability were reported by contract staff to be confused. A policy manual to assist staff was never fully developed by Eagle Rock. MSSH officials pointed out that the responsibility for these matters, according to the contract, was the owner's. The owner, in turn, did not believe that the budget provided by the ministry was adequate to meet his desired level and quality of staffing.

Ministry policy does not specify minimum or desirable levels of staff qualifications or acceptable staff-to-resident ratios. Nor does policy provide specific guidelines for what constitutes adequacy in supervision and training within its contracted child care facilities.

In effect, the ministry's contract with the owner provided him with complete discretion in deciding what constituted a "qualified" staff person or "adequate" supervision and training. Only in cases where there were grounds to believe that a child had been abused at the facility did ministry officials formally, and appropriately, involve themselves in matters of a personnel nature at Eagle Rock.

Ministry policy (May 1986) does reinforce the principle that the best interests of clients are the paramount consideration in the administration of purchased services (Purchase of Service Manual, Sec. 3.1). The best assurance in implementing this policy is a detailed contract requiring program definition, adequate numbers of skilled and qualified staff, competent management and administration, and coordinated case management and clinical support from involved government ministries. These elements of quality assurance were absent in the MSSH contract with Eagle Rock.

g) The absence of adequate provision for overnight staff supervision

The level of emotional disturbance and/or disabilities of residents, including those with fire-setting histories, should have alerted authorities sooner to the need for more rigorous supervision during the night-time period. Dangerous and forbidden night-time activities might then have been controlled. Current initiatives within the MSSH to establish standards and improve contracting practices, as well as cross-government initiatives to address contracting issues, are intended to address these and other concerns.

5. That cross-ministry communication and coordination were ineffective in expeditiously and lastingly resolving serious problems that existed, or were alleged to have existed, at Eagle Rock.

Timely action was not taken by the respective ministries to enforce the contractor's compliance with legislative and contractual obligations. The lack of effective, coordinated action among ministries which had, or should have had, a common interest in the Eagle Rock facility contributed to the absence or ineffectiveness of enforcement action.

Licensing officials did not formally seek to take joint action with the funding authority as soon as it became apparent that the facility operator was resisting, delaying, or ignoring requests to comply with licensing requirements.

MSSH officials agreed with the owner's request to place ten youths in a facility which had been approved by the Provincial Child Care Facilities Licensing Board for only nine. Licensing officials, as stated earlier, were neither informed nor consulted when this decision was made.

At times, significant differences of opinion existed among government officials from different ministries about the quality of care being provided to youths at Eagle Rock. These differences do not appear to have been lastingly resolved in a consensual manner. Ineffective problem solving was exemplified when a Corrections Branch probation officer formalized *substantive* complaints about the Eagle Rock program to a Judge. MSSH officials responded by complaining to the Corrections Branch about the complaint *process* used by the probation officer. The outcome was inconclusive and resembled an "agreement to disagree".

A major contributing difficulty in establishing effective local and regional inter-ministry coordination was the different boundaries of ministries. For example, the local MSSH district office had to liaise with three probation offices, five R.C.M.P. detachments, two or three Health Units, and two or three School Districts. While licensing officials responsible for Eagle Rock were based in Kamloops, the primary liaison office for the MSSH Salmon Arm district office was with licensing officials in Vernon. The Deputy Ministers' Committee on Social Policy recently established a cross-ministry task force to address this important issue and resolutions are reported to be imminent.

Any potential for a consensual resolution to the complex issues raised by this or other complaints about Eagle Rock was lost in an adversarial atmosphere which appears to have been the result of misunderstandings, ignorance and poor communication which developed over a long period of time, in the context of a highly complex service delivery system that was often not well understood in its entirety even by professionals who worked within it.

Summary

Without minimizing the seriousness of the concerns raised in this report, we believe that there is little to be gained from focusing on the acts or omissions of individual government officials. The tragic death of a 15 year old at Eagle Rock cannot be attributed to any single event. However, the findings of our investigation lead to the conclusion that the cumulative concerns that existed at Eagle Rock over a long period of time set the stage for this tragedy. These concerns cannot be adequately addressed through criticism of individual public servants or even, for that matter, individual ministries. The most serious problems appear to exist within the complex and fragmented cross-ministry regulatory and administrative systems which are established to respond to the special needs of children, youths and their families. This is the subject of the balance of this report.

PART C

Systemic Concerns about Cross-Ministry Services

Introduction

Eagle Rock focuses, but is by no means the single source of, our concerns about the fragmented state of services to special needs children, youths and their families in British Columbia. In 1989, complaint files closed or carried over to the next calendar year, relating to the treatment of children in the care of or receiving services from government, totalled 1,971. Thus, approximately one-quarter of our jurisdictional files were child or youth related. But this represents only a sample of the existing concerns in this public service sector.

Notwithstanding an increased emphasis on outreach by the Deputy Ombudsman and the child and youth team, a large number of children, youths and parents are still not well informed about the mandate or existence of this office. School boards do not currently fall within the jurisdiction of the Ombudsman's office, limiting our access to society's major child-serving institutions. Children, youths and their families who require special services are often unaware of their rights, available services, or avenues of complaint when they are dissatisfied with an administrative decision.

When individuals have a dependent relationship with a public authority, the formalization of a complaint about that authority can lead to fears of reprisal. This office is frequently told by callers that they are fearful of negative reactions by government officials if they complain about the treatment of a child or youth. During a recent two month period, 29 callers to this office expressed serious fears about possible reprisal if they formalized a complaint concerning a child or youth. Families with special needs children are often highly dependent on government for financial and other forms of assistance; the poor are traditionally over-represented in child welfare and youth corrections systems. Based on concerns for continued employment, other natural advocates — public servants, contracted service providers and alternate caregivers — also frequently express fears to this office about complaining.

Real or perceived, these fears can act to inhibit the healthy expression of concern and impede a fair process of administrative review. Senior government officials have assured this office that reprisals will not result from the laying of a complaint. The need for effective review and complaint mechanisms is recognized within the policies of each ministry, and initiatives to further strengthen these policies are discussed later in this report. The sensitive implementation of these policies by front-line staff is vital, given the often ill-informed and powerless status of the consumer population in this public service sector.

As well as individual complaint investigations, this office has engaged in extensive and ongoing consultations with consumer groups, service providers, professional and community organizations, and relevant departments in universities and colleges. These consultations have reinforced our belief in the need for systemic review and change intended to improve the way in which cross-ministry services to children, youths and their families are planned, organized, delivered, monitored and held accountable.

Senior government officials have stated to this office their intent that this public report serve as a stimulus for careful review of existing structures and processes intended to ensure integrated approaches. Consensus exists that the service delivery system can be improved. But simple solutions to the complex special service needs of children, youths and families are not yet apparent. In recent times, public awareness about the extent to which children and youths are abused and neglected has increased. In many cases, these abuses take place within systems, including the family, the school and child welfare systems, intended to protect, nurture and develop the health and well-being of children.

The continuing search for innovative ways to reduce or eliminate these abuses and to improve preventative systems designed to support children, youths and their families, will require broad public participation and support if necessary change is to be meaningful and lasting. Government's leadership responsibility is apparent through its legislative mandate to administer a wide range of child and youth related health, education and social services.

Many positive initiatives are being taken by government to address the special needs of children and youths, but this office remains concerned about the complex and fragmented nature of these services. The uneven nature of current cross-ministry approaches to information gathering, policy and program planning, standard setting, monitoring and enforcement, case management, as well as administrative advocacy, review and appeal, may serve to undermine public confidence in the system and reduce the overall effectiveness of many innovative individual programs. Integrated approaches are essential in planning, organizing, delivering, monitoring and evaluating services to a vulnerable population whose service needs frequently cross ministry, agency and professional boundaries.

Children's needs cross administrative boundaries

Significant overlap exists in the population of special needs children, youths and families served by the child welfare, child and youth mental health, youth forensic, youth corrections, youth alcohol and drug and criminal injury compensation systems. In 1979, a research consultant reported to the provincial Inter-Ministry Children's Committee (IMCC) that

> A study of "hard to serve" children brought to the attention of the Provincial IMCC, showed 85% receiving services from the Ministry of Human Resources (now MSSH), as well as service from one or more of the other three Ministries. The remaining 15% were handicapped children requiring special education assistance and health care.

In August 1985, a "Survey of Services to Sexually Abused Children" by Ministry of Health, Mental Health officials in the Fraser Valley/North Shore region found that

> At least three-quarters of the cases handled by the Mental Health Centres also included the formal involvement of one or more (other) Government Ministries. This indicates that services to sexually abused children were provided largely on a multi-ministerial basis, supporting the contention from various sources that Government Ministries should coordinate their involvement and service delivery in this area.

In January 1989, a report entitled "Orphans of the System", prepared by David Mercier, MLA, and Geoff Belsher identified cross-ministry problems in planning for children and youths with learning disabilities. The report focused on the costs to government of juvenile delinquency related to learning disabilities and found "the compelling argument for dealing with learning disabilities at an early stage". The need for further cross-ministry study of the long term costs, if learning disabled children are not adequately diagnosed and treated, and for increased cross-ministry cooperation in service provision was identified.

A 1983 resolution adopted by the American Bar Association was cited as recognizing

> . . . a correlation between children who suffer from the handicap of learning disability and children who are involved in the juvenile justice and child welfare systems.

A 1983 report "Three Decades of Change", prepared for Ontario's Ministry of Community and Social Services, stated that

> It has been commonly accepted wisdom for some time that there is considerable overlap between the various service streams... For many children it is a matter of chance whether they receive service from the child welfare or the corrections or the mental health stream. It has also been noted over the years that some children's aid societies have in care a high proportion of developmentally handicapped children. Thus, a narrow focus on any one stream produces an incomplete picture of events, and may lead to ill-founded conclusions... Consequently, an approach relating developments within the child welfare, juvenile corrections, children's mental health and mental retardation service streams is seen as providing the most complete and helpful overview.

Corrections Branch officials are well aware of the significant proportion of youths in that system that are past victims of abuse or neglect and who suffer from a range of mental health problems and learning disabilities. Many youths were wards of the MSSH at the time of their incarceration.

A 1989 research report of "Psychological Characteristics of Sentenced Youths: A Comparison of Samples from 1981, 1984, 1989" at the Willingdon Youth Detention Centre in Burnaby, B.C., recommended that "the present program of research be continued and, if at all possible, expanded". The Youth Detention Centre was seen to carry "... a heavy burden of responsibility in terms of housing inmates who may have a significant degree of psychological dysfunction". An "alarmingly high level of depressive symptomatology" was found to exist "with 20% demonstrating scores indicative of severe depression". The recent suicide by a youth resident at the Willingdon Youth Detention Centre in Burnaby demonstrates the desperate state of many incarcerated youths.

A U.S. article about "Incarcerated Adolescents" in the Journal of Adolescent Health Care (Vol. 10, No. 6, 1989, p. 490) found that

> Numerous studies of incarcerated children indicate that they suffer from major depression and report an unusually high rate of suicide attempts... The high incidence of mental illness among children incarcerated in the juvenile justice system may reflect the fact that a child's placement in the juvenile justice system, as opposed to the mental health system, is often fortuitous...

Children in need have a habit of crossing legislative, service, professional and agency boundaries. The complex, inter-dependent nature of child-, youth- and family-serving professions and agencies is well known to consumers, service providers, administrators and social planners. In recent years, increased awareness about the need for integrated approaches to service delivery in this public service sector has led to the consolidation of legislative and administrative approaches in provinces such as Ontario, Quebec and Nova Scotia.

Current reviews by ministries of important child-related legislation such as the Family and Child Service Act, the Mental Health Act and the Community Care Facility Act suggest that it is timely to encourage broad public involvement in a process intended to strengthen integrated approaches to service delivery. This public report reflects the Ombudsman office's concern for fairness in the administration of public services to children and youths and is intended to assist government in its efforts to promote the best interests of B.C.'s children and youths. Our experience investigating complaints involving children and youths forms the basis for much of our concerns.

Common concerns arising from complaints to Ombudsman

It is impossible to describe in detail every one of the more than 160 complaints per month received by this office concerning children and youths. Previous Ombudsman Annual Reports have documented a range of case examples involving children and youth and have identified areas of systemic concern related to these complaints.

Many complaint investigations by this office have confirmed that problems experienced by an individual child or youth may not comfortably fit within the mandate of a single government department or ministry. Through an analysis of complaint investigations, this office has identified patterns which indicate the need for systems improvement:

- Inconsistent or confused cross-ministry case management practices which impede or delay delivery of special services to a child or youth and the absence of uniform, consistent and fair procedures for expeditiously resolving conflicts that arise concerning administrative planning and decision-making;
- Delays in planned discharge from, or inappropriate admission to, correctional or mental health institutions resulting from poor case management practice or from gaps in the continuum of appropriate community residential, treatment and educational or vocational training services provided through various government departments;
- Consumer and referral agent confusion resulting from apparent gaps and overlapping roles of different government departments in providing preventive and family support services; examples include families with young children whose problems are not yet assessed to be severe enough to warrant specialized intervention, and serious parent-teen conflicts which often require integrated responses from MSSH social workers, Mental Health counsellors, Corrections Branch Family Court Counsellors and other involved service providers;
- Pressures in the system from parents and social service providers to lock up youths for their safety and treatment because of the apparent lack of available, appropriate community based alternatives, with the resultant dangers of labelling youth as criminals or holding them, against their will and (until recently) without due process, in secure mental health facilities;
- Systemic difficulties in responding to the special needs of youths in transition to adulthood, particularly when parents are unable or unwilling to financially or emotionally support them in independent living situations. Particularly vulnerable groups include pregnant teenagers, adolescent parents, wards of the MSSH and street involved youths;
- Challenges of balancing the need for appropriate management and supervision with the need for remedial and treatment programs for young offenders including issues related to community contact and release planning for youths placed in custody who are unable to return home; incidents of peer abuse in institutions; appropriate use of high risk wilderness programs; and special care, education and treatment required by certain groups of young offenders including sex offenders and those with emotional, psychological, developmental and learning disabilities;
- Uneven and sometimes inconsistent approaches to internal and external monitoring and enforcement of standards of care within publicly funded child and youth day and residential care programs. This office has noted an increase in the number of complaints concerning alleged abuse of children and vulnerable adults within publicly funded residential programs;
- Consumer and referral agent confusion about how to access treatment services for child victims of abuse which are provided through private psychiatrists funded through the Medical Services Plan when referred by a general practitioner; private psychologists, social workers, "counsellors" or "therapists" funded by the Criminal Injury Compensation program; Mental Health Centres; Forensic Youth Services; or, in limited circumstances, through MSSH contracts;
- Frequently expressed consumer and service-provider frustration and confusion about the complexity of the service delivery system which requires that children, youths, parents and other advocates must "shop around" for accurate and complete information about available and appropriate special services that are provided through a wide range of public and private agencies.

Usually, parents act as natural advocates ensuring that their child's health, education, recreation, social and other normative and special service needs are met. But it cannot automatically be assumed that children, youths or their parents are informed consumers in this highly complex public service sector. Parents who are raising a child with disabilities, often with limited resources, have described to us their struggle to cope and survive on a day to day basis. They may not possess the energy or information required to act as effective advocates. For thousands of B.C. children each year, their de facto parent is the state, and natural parents and alternate caregivers may not have the status to advocate effectively on behalf of a child.

The challenge in B.C., as in other jurisdictions, is to avoid the pitfalls of administrative expedience whereby a child's special needs are conveniently divided into service components to fit a fragmented system. Innovative child-centred approaches are required that are capable of adapting and responding, in an integrated multi-disciplinary manner, to the unique special needs of each child. This is not a simple challenge for this multi-agency, multi-disciplinary field.

Current approaches to cross-ministry coordination

Governments in British Columbia have long recognized the need for cross-ministry coordination in the delivery of child, youth and family services. The core services within various ministries for special needs children, youths and their families have been augmented by a range of inter-ministry projects:

Sexual Abuse Interventions Project

Under the direction of an Assistant Deputy Ministers' Steering Committee, this cross-ministry initiative is intended to augment current counselling and treatment services for both victims of child sexual abuse and sex offenders. $3,000,000 have been allocated from the existing budgets of the Ministries of Health, SSH, Education, Attorney General and Labour and Consumer Services. Programs will be introduced in the fall of 1990 and are primarily directed at Native peoples, people with disabilities, individuals living in rural or isolated circumstances and juvenile offenders.

Inter-Ministry Child Abuse Handbook

The third edition of the Handbook was released in February 1989 and establishes inter-ministry protocols for child abuse investigations. Important revisions include a section detailing procedures for integrated approaches to investigation and intervention, specific protocols for special situations (e.g. cases involving multiple victims, abuse in licensed facilities), and recognition of the importance of prevention, support and treatment. Following a two-day provincial training session, 200 professionals were expected to return to their communities and form inter-ministry committees to establish local protocols and to coordinate training activities.

"At Home" Program

In June 1989, the government announced this $14.7 million program under the joint jurisdiction of the Ministries of Health and SSH. The program is designed to provide health-related supports for up to 1,500 severely disabled children being cared for by their parents at home. This program was developed with the assistance of a Parents' Advisory Committee and as of May 21, 1990, 572 special needs children were being served. Another 87 children were considered eligible for respite care benefits.

Regional committees are established under this program to screen assessments and make recommendations to a Victoria-based central advisory board for a determination of eligibility. Government hopes that eventually it will be possible to give the 10 regional committees full responsibility for admissions to this program.

Project RECONNECT

This project is designed to assist young people from 12 to 19 years to leave the streets and to prevent other youths from becoming involved in the street scene. According to government officials, the Reconnect program is linked to established agencies through a dedicated inter-agency committee, a local IMCC or ad-hoc multi-agency groups.

Inter-Ministry Protocols for the Provision of Support Services to Schools

The Report of the Sullivan Royal Commission on Education identified the need for more effective inter-ministry coordination of services to children and youths with special needs. On

February 15, 1990, government announced that the Ministries of Education, Health, SSH and Solicitor General had signed an agreement to improve the delivery of non-instructional support services to students.

A compendium of 14 distinct protocols was signed by relevant ministries covering

- audiological services (Education and Health),
- generalized school health services (Education and Health),
- school environment and health inspection of schools (Health and Education),
- educational programs in containment and attendance centres (Education and Solicitor General),
- educational programs in treatment settings and hospitals (Education and Health),
- pre-school programs for special needs children (Education, Health and SSH),
- in-school support for special needs students (Education and Health),
- services to school-age children with severe mental, behaviourial, and emotional disorders (Health, Education, and SSH),
- psychological services to school-age children (Education, Health, SSH, and Solicitor General,
- physiotherapy and occupational therapy (Education and Health),
- speech and language therapy (Education and Health),
- family and child service to support children in schools (Education and SSH).

Protocols were also signed regarding the provision of specialized equipment for use at home (Education, Health and SSH), and policing in schools (Education and Solicitor General). More information was required in these areas and inter-ministry committees were established to undertake further review. A fifteenth protocol was signed by all four ministries establishing procedures through which these protocols would be tracked and their impact measured.

Initiatives to strengthen families

In 1988/89 the provincial government committed $20 million for a variety of family support programs under the Families First initiatives. Twelve ministries and agencies have been involved in developing services, intended to augment those already in place, with a general focus on

- promoting positive parenting by providing parents with skills training and other services,
- services to families where one or more members of the family have special needs,
- encouraging increased local participation in identifying need and providing services, and
- services to support family independence by helping people meet their own needs.

One of these programs, Nobody's Perfect, is designed to meet the needs of young, single, low-income parents with pre-school-age children and is an outcome of a unique partnership between the federal and provincial governments.

An inter-ministry committee provided direction for this initiative and served as a forum for the exchange of information about family related issues.

Inter-ministry committee on criminal gangs

In June 1989, this committee was established by the Ministry of the Attorney General to examine the issues of organized criminal gangs operating in urban centres. The purpose of the committee is to develop an integrated approach by examining issues of recruitment, crime prevention and community awareness in order to identify strategies for addressing gaps in services, resources, policies and research. Membership is comprised of federal and provincial ministries, the city of Vancouver, police, school boards, the B.C. Teachers' Federation and the Vancouver Community College.

Child protection and Family Court protocols

When parental custody and access disputes involve allegations of child abuse or neglect, MSSH social workers and Corrections Branch family court counsellors are required to integrate their efforts to minimize the potential harm to children and to guard their best interests. In September 1990, government introduced a new inter-ministry protocol intended to clarify the respective roles of family court counsellors and social workers when working with the same family. It is anticipated that locally structured meetings will bring together family court counsellors, social workers, Crown counsel and family court judges. Issues related to maintenance, family mediation, and the involvement of a Family Advocate to ensure that the child is independently represented before the Court were not included as part of this protocol and are addressed separately in the policies of the respective ministries.

Children at Risk Review

In the fall of 1989, the Ministries of Education, Labour and Consumer Services, Health, SSH, Solicitor General, Attorney General and Native Affairs established inter-ministry committees under the Deputy Ministers' Committee on Social Policy to review services to children at risk, with a specific focus on child victims of sexual abuse, children with severe handicaps, adolescents with multiple problems, and Native children.

The range of services to children, youths and families is extensive, and this review by government recognized that overlaps, gaps and conflicts exist that may result in confusion to consumers and in some children being underserved or inappropriately served.

Inter-Ministry Children's Committees (IMCCs)

In January 1979, the International Year of the Child, the Cabinet Committee on Social Policy established IMCCs at the provincial, regional and local levels. Membership was initially comprised of appointed representatives of the Ministries of Attorney General, Education (or school boards at local and regional levels), Health, and SSH (then Human Resources) with SSH being designated as the lead ministry.

The IMCCs were designed to coordinate case management issues at the local, regional and provincial levels for "hard to serve" youths between the ages of 12 and 19 years. The major purpose of the IMCCs was described by government as follows:

> ... to facilitate provisions of services to those children whose needs cannot readily be met through the normal procedures of the ministries involved, with emphasis on finding solutions to most problems at the local levels, and on providing regional and provincial support where a need is clearly indicated. This includes planning for resource modifications or linkages at the local and regional levels, and coordinated use of services to provide a comprehensive program for a child in need.

Guidelines established by the Deputy Ministers of these ministries stated the broad scope but limited mandate of the IMCCs to

> ... facilitate coordination of services from the social service Ministries, but have no direct impact on the internal policies and programs of these Ministries... The Committees have no separate source of funds, acting as coordinating bodies rather than as providers of services... Children's Committees are involved in such concerns as children with severe behaviourial problems, children in conflict with the law, child abuse and handicapped children. The Committees are concerned with all children with special needs...

The Provincial IMCC was later disbanded and in recent years the Deputy Ministers' Committee on Social Policy has assumed the provincial coordinating role along with their other duties.

Based on our experience with a growing complaint load and frequent concerns about inadequate or unclear case management practices, a review of the IMCCs and related case management matters was initiated. On June 14, 1988, this office documented its concerns about the limited effectiveness of the IMCC system in ensuring effective cross-ministry case management and coordination in a letter to the Deputy Ministers' Committee on Social Policy. We found that

- Mandate confusion was common, and serious concerns existed about the limited mandate, lack of resources and unclear accountability of regional and local IMCCs.
- Regional or local IMCCs no longer existed in some areas of the province and where they did exist, they resembled informal networks of committed service providers rather than a distinct component of a formal provincial coordinating system.
- Regional IMCC members frequently expressed serious concerns about the lack of access to an authoritative cross-ministry pro-

vincial forum through which to communicate policy and program ideas and concerns.

- The limited mandate of IMCCs to only address the service needs of "hard-to-serve" older adolescents restricted their ability and desire to focus cross-ministry attention on the broad scope of services and especially those of a preventive nature targeted to younger children and families. This was a concern frequently expressed by educators and public health officials.
- Significant inconsistencies existed in the membership of IMCCs with some ministries not routinely represented, non-government agencies represented in some areas and not others, and committee members appointed, or volunteering, who operated at different levels of authority within their respective ministries.
- The disparate regional and local boundaries of each ministry caused considerable confusion about membership and geographic jurisdiction for IMCCs.
- IMCCs lacked any formal authority to direct that services be provided and adequate resources to properly plan, implement and monitor effective and accountable cross-ministry case management systems.
- Concerns existed about changes to the Intensive Child Care Resources (ICCR) program which was originally intended as an inter-ministry, inter-disciplinary program with close links in some areas to IMCCs. This program was now being perceived as a program administered almost exclusively by the MSSH.
- Additional levels of "macro-regional IMCCs" had evolved to priorize referrals of "hard-to-serve" youths to the ICCR program and the Maples Adolescent Treatment Centre. Links between existing IMCCs and the macro-regional IMCCs were not well understood by many service providers.
- Concerns existed about the burgeoning number of cross-ministry protocols which, while essential to clarification, constitute an enormous procedural literature that few service providers can be expected to master.

The minutes of one recent regional IMCC meeting reflected a general concern that this office found to exist among IMCC members:

> ... we gather at the regional level a voluntary association... there is loosely held but increasingly formal affiliation with the local IMCC bodies, and there is no longer any connection with any provincially mandated committee to either report to or field to on the basis of our findings and concerns.

Intensive Child Care Resources (ICCRs)

In 1982, the provincial government established ICCRs with a mandate to coordinate inter-disciplinary teams in five regions of the province and to bring together the services of several ministries under one program. In some regions, links were established between the ICCR and IMCC and some professionals saw the ICCR as the necessary service arm of the IMCC. The MSSH was designated as the lead ministry.

The following principles were established by government for the ICCR program:

- to serve a maximum of five children (12 to 19 years) per region for a provincial maximum of 25 children,
- to serve children who could not, or should not be admitted to containment centres but who require special residential care, therapeutic services, or who are considered a danger to themselves or others,
- to provide security through effective staff in sufficient numbers (24 hours per day if necessary) using interpersonal relationship and behaviour modification skills rather than "locks and bars",
- to ensure local self sufficiency and the resourcing of special needs children in their own community so that no children are referred out of province for residential care,
- to divert children from the court process wherever possible,
- to ensure one unified cross-ministry case plan for a child prior to presentation to a Court, and
- to priorize urgent cases, avoid waiting lists and to not reject children because they are too difficult to cope with.

Service providers involved with the IMCCs and the ICCRs have observed that the inter-ministry and inter-disciplinary nature of the ICCR program has changed significantly from that originally intended. Since the 1988 reorganization within the MSSH, the program appears to have become one identified as belonging to that ministry. This office is not aware of any systematic provincial evaluation of the ICCR program, although innovative approaches appear to have been developed in some areas, especially where formal links evolved with IMCCs.

Other inter-ministry initiatives

To be current and well-informed about the diversity of inter-ministry activities is a significant challenge for consumers, professionals, community organizations and public servants in this public service sector. The provincial initiatives described above do not represent an exhaustive list of inter-ministry activities. For example, an inter-ministry committee is currently reviewing options for the decentralization of the Maples Adolescent Treatment Centre, a provincial mental health facility administered by the Forensic Psychiatric Commission. Protocols were also recently developed between the MSSH Superintendent of Family and Child Service and the Public Trustee concerning their respective roles as guardians of the child's person and the child's estate when the child is a permanent ward.

The need for integrated and accountable case management

The fundamental goal of the range of cross-ministry projects and protocols described above is to ensure that multi-disciplinary services are expeditiously provided in response to the defined special needs of a child or youth and within the context of his or her family, community and cultural environment. This goal is easier to state than to achieve within a complex multi-ministry environment.

A number of government ministries have committed significant resources to a wide range of special services for children, youths and their families. The mere existence of these services and programs is not enough. They must then be organized, delivered, monitored and evaluated to ensure that they are accessible and responsive to the defined target population of children and youths. When different agencies and service-providers are involved, integrated approaches to case management are required.

The importance of integrated multi-disciplinary approaches to the provision of child, youth and family services has been widely recognized in many jurisdictions and has been formally stated in the 1988 revised edition of British Columbia's Inter-Ministry Child Abuse Handbook as follows:

> Those trying to prevent child abuse and those who intervene in child abuse cases must work together in order to ensure that their efforts have the intended effect. Central to the approach taken by each of the ministries contributing to this handbook is a belief that the most effective response to all allegations of child abuse, at each step of the process of investigation, assessment, intervention and treatment, is one which is integrated and interministerial. Experience has shown that where there is little or no communication between the ministries and agencies involved, tragedies can occur.

Case management defined

An important aspect of cross-ministry coordination involves the practice of effective individual case management which is carried out in a multi-disciplinary professional environment. In the 1984 Annual Report of the Ombudsman, page 10, the establishment of effective case management systems was urged as part of good administration in provincial institutions. At that time, we defined case management as

> . . . a procedure that identifies specific problem behaviours, describes goals and objectives (what is to be achieved), sets out a step by step plan of action (how the objectives will be achieved), designates the person(s) responsible for reaching the objectives (who will carry out the plan) and determines the method by which the plans will be evaluated. In addition, long term goals must be set. . . and trained personnel must be responsible and accountable for monitoring and reviewing documented case management reports.

These principles apply beyond the walls of an institution. Our experiences with complaint investigations, particularly those involving more than one agency or ministry, indicate the pressing need for improvements in community-based case management practices.

One tool often used to monitor case management accountability is a review of file documentation. This office regularly reviews client files of various ministries as part of its investigation of complaints. Inconsistency within and between ministries in terms of file recording is significant, although improvements have been noted in recent years, particularly where file information is collected in anticipation of Court proceedings. Some files are voluminous and highly subjective in terms of information. Others are scant in terms of available, factual and relevant information. Others are organized, focused, goal oriented and succinct. Documentation provides a major basis for internal and external monitoring and audit functions. It is a vital component of an effective case management system.

Each ministry develops its unique systems and methods of verbal and written communication in planning and providing services to special needs children, youths and their families. Terms and procedures such as permanency planning, treatment planning, diagnosis, assessment, problem oriented record system, individual service plan, and goal oriented service planning may be well understood within one ministry or profession. They then require translation when utilized in a multi-agency, multi-disciplinary setting and with consumers. The need to use plain language in this sector of the public service is particularly acute if communication between service providers, each with their professional and bureaucratic languages, and children, youths and parents is to be meaningful.

Government has acted to define common cross-ministry approaches to child abuse investigations through the Inter-Ministry Child Abuse Handbook which promotes an integrated approach to practice. Similar principles, promoting integrated approaches to service delivery, are required governing the broad child, youth and family service field. These principles must be fully communicated to, and understood by, service providers and consumers alike.

In response to complex human service delivery systems, case management approaches have emerged and have received considerable attention in the literature where

> Good case management implies continuity of services, planfulness, i.e. rational decision making, in designing and executing a treatment package, coordination among all providers of services, effective involvement of the clients, timeliness in moving clients through the process, and maintenance of an informative and useful case record. ("Case Management: State of the Art", National Conference on Social Welfare, U.S. Dept. of Health and Human Services, Washington, D.C., 1981)

The role of the case manager in the child welfare field usually consists of five major functions; namely assessment, service or treatment planning, service monitoring, service brokerage and advocacy, as well as tracking and evaluating.

Distinctions have been identified in the literature between case management *practice* and case management *system* where

> Case management *practice* refers to those tasks in the process that involve direct and immediate implementation of a case plan. The case plan is viewed as a totality that includes the client, case manager, service provider, and their respective activities. Case management *system* includes case management practice along with administrative supports, systemic arrangements, and formal and informal community resources necessary for the implementation of case management practice. ("Case Management: State of the Art", National Conference on Social Welfare, U.S. Dept. of Health and Human Services, Washington, D.C., 1981)

A planned and integrated continuum of services to special needs children, youths and their families is a necessary systems support to effective case management practice. Formal and effective coordinating and accountability mechanisms and common approaches to multi-disciplinary training are also required.

In 1987, the Ontario Ministry of Community and Social Services reviewed case management problems in child, youth and family services in that province. This resulted in the development of a manual entitled "Case Responsibility in Ontario: a Resource Document" which defined the Ministry's interest in case responsibility as being

> . . . to ensure, as far as possible, that responsibility for the responsiveness of services to children and families is fixed somewhere within the service delivery system.

"Responsiveness" was defined by a number of specific indicators including:

- The extent to which services are provided in a coordinated manner within and between agencies;
- The smooth transfer of responsibility for clients between agencies, where continuity of services is required and possible;
- The degree to which agencies provide the services they contract to provide;
- The extent to which families are involved in service decisions that affect them;
- The degree to which services adhere to the Ministry's basic principles of service delivery which are defined in legislation.

Similar measures of case management accountability could be usefully applied in B.C. where the multi-ministry organization of services to children and youths is complex and confusing for service providers as well as for vulnerable and often ill-informed consumers. Current mechanisms established by government in B.C. to reinforce the need for integrated approaches to service delivery appear limited in their effectiveness and worthy of comprehensive review and change. The pressing need for improvements in the way that special services to children, youths and their families are delivered in B.C. has been articulated by many groups and organizations with legitimate interests in this public service sector.

Systems concerns identified by others

Our assessment of the seriousness and scope of current problems in cross-ministry coordination is largely derived from experience with complaint investigations. But these concerns have been reinforced through our extensive and ongoing consultations with consumers, service providers, professional organizations and community agencies throughout B.C. Serious concerns about current administrative approaches to the delivery of publicly funded services to special needs children, youths and their families have been expressed and documented by many diverse and credible sources including

- the Sullivan Royal Commission on Education,
- the B.C. Teachers' Federation,
- the City of Vancouver's Child Advocate,
- a 1989 Multidisciplinary Forum on Adolescent Health,
- the B.C. Recreation and Parks Association,
- the B.C. Association of Social Workers,
- a former Superintendent of Family and Child Service, and
- the Child and Youth Care Association of B.C.

An education perspective

The 1980s began with a world-wide focus on children's issues. The United Nations proclaimed 1979 as the International Year of the Child. Canadians and British Columbians united to celebrate this most valuable natural resource and to seek consensual ways to improve the status of those children who, for various reasons, were disadvantaged.

In November 1979, representatives from 40 B.C. organizations attended a Vancouver conference, "Invest in Youth and Children" sponsored by the B.C. Teachers' Federation. Recommendations formulated by the 150 participants which related to inter-ministry issues included the needs

- to coordinate health, education, recreation and social services to children and families and to develop an interdisciplinary, unified approach to service delivery,
- for a comprehensive family policy to be formulated by the provincial government to promote coordinated delivery of services,
- for planned mental health preventive and treatment services for B.C. children,
- to implement the Berger Commission recommendations concerning children's rights and put into B.C. legislation the UN Declaration of the Rights of the Child,
- to expand the IMCC mandate to include positive action on behalf of children and to provide the necessary powers to act,
- to develop advocacy courses for children, and

- to create a department of children within government to provide ombudsman services for children, to coordinate and initiate legislation dealing with children, to provide a clearinghouse for concerns about children, and to be a common place for groups to put forth recommendations concerning children.

(Source: Conference Report, B.C. Teachers' Federation, Vancouver, B.C., November 1979)

In his concluding statements to this conference, Dean Neville Scarfe, Professor Emeritus at the Faculty of Education, U.B.C., saw the International Year of the Child as "an opportunity to focus on children and put them in their proper place; at the centre of world concern". He recognized the major problem of children as that of poverty and wondered aloud about whether the year would be remembered for its "glitter" or for the action that would result from the year's activities. He concluded that "If the year's work is to improve the lot of the child then every year now must be the year of the child".

Concerns about current approaches to cross-ministry coordination were more recently identified by the 1988 Sullivan Royal Commission on Education, "A Legacy for Learners", which found that social service agencies

> ... typically define their own responsibilities in such a way that only extremely pressing problems, or problems described very narrowly, were likely to be addressed by them. Consequently, marginal cases" often fell between their jurisdictional boundaries." (p. 71)

The Commission's report recognized that its suggestion of a narrow social role for schools "obviously necessitates broader responsibilities for other agencies". IMCCs were viewed by the Commission as too limited in their mandate to be effective:

> One major problem which severely limits the effectiveness of these committees is that they have neither a budget to pay for services nor binding authority to act; consequently, their decisions and recommendations do not necessarily produce action.

Options were suggested to government by the Commission in planning future directions for the delivery of social services to special needs children, youths and their families. The school was suggested as the "organizational centre" where local services could be coordinated and delivered. The Commission recognized that solutions could only be found within the context of cross-ministry planning:

> The delineation of... jurisdictional responsibilities and the definition of organizational service models are matters that should be discussed and resolved within these ministries of government upon consultation with the major provincial educational authorities and the organizations within the volunteer child-care sector.

The compendium of 14 Inter-Ministry Protocols for the Provision of Support Services to Schools, described above, was prepared by government in response to the Commission's recommendations. The expansion of services for school-aged children and government's commitment to cross-ministry review and evaluation of the effectiveness of these protocols is welcomed by this office.

It is too early to assess the effectiveness of this initiative, but review by government of concerns about the growing number of cross-ministry protocols and the ability of already overburdened field staff to adequately keep track of them appears warranted.

A Child Advocate's perspective

The top priority of Vancouver's Child Advocate is given to the area of daycare and child care for children up to age twelve. But the Children's Advocate has reported receiving a significant number of concerns from the community about the delivery of social services to children and youths by provincial government ministries. A report by the City Manager to the Vancouver City Council on February 7, 1990, found

> Inequities in resource allocation with respect to the needs, lack of a mandate and accountability with respect to coordination and planning for children's services, and the need for changes in the way in which services are delivered in order to meet the needs of changed family structures and the multicultural composition or our community.

Of particular concern in Vancouver, as elsewhere, is the lack of adequate mental health services to special needs children and youths:

> The lack of mental health services for children and youth has emerged as one of the

> biggest gaps being experienced in the community. Caregivers indicate an increased number of children with complex problems and challenging behaviours at very young ages. There are limited resources available for early intervention and family support. Further, resources which do exist are not easily accessible due to wait lists, fees or lack of outreach. Many of these children develop serious emotional difficulties later on and then require intensive critical or crisis intervention services.

Serious concerns about overall coordination of child, youth and family services, notwithstanding the existence of a very active IMCC, have been identified in Vancouver:

> The second trend to emerge from community consultation, concerns the lack of coordination of current services for children. There is no level of government at a provincial, local or neighbourhood level base that has a mandate to coordinate the various services or to plan in an integrated way for the development of children's services. In fact, as service providers are stretched to the limits of their resources, the trend is for statutory and voluntary mandates to be more narrowly defined. Front line workers report that they have little or no contact with other workers, many of whom may be dealing with the same child or family. Parents experience difficulty in getting service providers to plan in a comprehensive way for their child. It is a tribute to the dedication of current service providers that "service teams" are functioning in many parts of Vancouver. Many community groups suggest that these neighbourhood based responses need to be supported with inter-ministerial cooperation and coordination at senior levels of the provincial government. The idea of a Ministry for Children and Youth continues to receive attention and some measure of support in the community.

The high incidence of child poverty and the lack of available and affordable family housing was also noted with considerable concern by Vancouver's Children's Advocate who saw the need, as a priority, to "promote coordination and planning for children's services and a systematic approach to the collection and dissemination of information on children".

Health perspectives

On November 4, 1989, a multidisciplinary seminar on "Future Directions in Adolescent Health" was jointly sponsored by the Department of Paediatrics at the University of British Columbia and the B.C. Children's Hospital. Participants represented a broad spectrum of professions and agencies in the health and social services. A consensus was reached about the need for

> development of an advocacy program on behalf of adolescents and provisions of continuity of care and coordination of services for adolescents (at the Ministerial level), with consideration being given to establishing an Office for Youth. Priorities should be given to the development of outreach programs which would provide linkage and coordination of the various health professions involved in meeting the needs of adolescents. The need to consider both geographic and cultural factors in developing these programs was stressed. (Seminar Summary Report, p. 2)

Community social service perspectives

Organizations representing front-line service providers in the child, youth and family service field have also documented serious concerns about the fragmented nature of services in this province. Issues related to cross-ministry coordination and secure funding for appropriately trained youth workers have been identified by the B.C. Recreation and Parks Association. The membership of this association includes community youth workers who are well placed to identify, at an early stage, children and youths with special needs.

Social workers are often the first contact with the public social service system for families with a special needs child or youth. The B.C. Association of Social Workers (BCASW), in a recent meeting with the former Minister of Social Services and Housing, reiterated their call for "an investigation of services to children, youth and families, with emphasis on the need for preventive services and for an independent advocate for children and youth". ("Social Work Perspectives", July 1989). The BCASW has expressed longstanding concerns about fragmentation and overlap in services provided to children, youths and families by various government ministries and has suggested the need for a Royal Commission to examine, among other things, "current structures for delivery of services to children and youth". (BCASW resolution reprinted in Social Work Perspectives, July 1989).

In April, 1990, Mr. Andrew Armitage, the Director of the School of Social Work at the University of Victoria and former Superintendent of Family and Child Service, commended the MSSH for initiating an important policy document through its 1990/91 Business Plan. The importance in the ministry's statement of values of "The Central Role of the Family" was noted, but Armitage pointed to the lack of recognition about "... how difficult it is for families to get access to services in British Columbia... (which) has the most confusing set of inter-ministry connections of any province in Canada". With respect to the current organization of cross-ministry services to children, youths and families, he wrote of the Business Plan that

> The closest to an acknowledgement of a problem is in the emphasis placed on "strengthening partnerships" with other ministries and on developing cross-program guidelines, protocols, coordination and like. All of these strategies avoid mentioning the possibility that the building blocks (Ministries and Programs) for serving families may be wrong, and that what is needed is a fundamental review of the inter-ministry approach to the family.
>
> Here again hard data and specific objectives are lacking. How many handicapped children are there in British Columbia? What agencies serve them? How many duplicate files and admission assessments exist? How many hours of professional time are spent in inter-ministry coordination rather than in direct service? We do not know the answers to these questions because we have not asked the basic questions about how services are organized.

This review was subsequently endorsed by the University of Victoria's School of Social Work Council and the Board of Directors of the B.C. Association of Social Workers.

In a 1987 newsletter of the B.C. Child and Youth Care Association concerns about the need for child advocacy were discussed in conjunction with the (since changed) role of the MSSH Superintendent of Family and Child Service:

> The role of children's advocate is a delicate one for the incumbent in the Superintendent's position, as in advocating for children one is sometimes called upon to criticise the lack of services to children in a number of program areas. In effect, the role is one of a children's ombudsman.

Canadian initiatives on children and youths

Notwithstanding notable improvements in some areas, the national agenda for addressing the special needs of children and youths appears remarkably similar to that established during the 1979 International Year of the Child. But hopeful signs do exist that the special needs of children and youth are receiving the public attention that they deserve.

On September 30, 1990, Canada's Prime Minister co-hosted a World Summit for Children at the United Nations (U.N.). The largest gathering of world leaders ever to attend such an event at the U.N. discussed the plight of the world's children and many nations committed to the ratification of the U.N. Convention on the Rights of the Child. In Canada, a federal Minister for children was subsequently appointed by the Prime Minister and plans have been announced to establish a children's bureau. This bureau will be charged with responsibility for the integration of child and youth focused federal programs.

On October 10, 1990 UNICEF (B.C.) sponsored a provincial conference on the U.N. Convention that signified the leading role being played by this province in promoting the U.N. Convention. Following assurances from the provinces that their legislation is in compliance, Canada is expected to ratify the U.N. Convention during 1991. In B.C., a compliance audit is being completed by the Ministry of the Attorney General and this province appears to be well prepared to support ratification by the federal government.

A federal perspective on child abuse

Major federal reports on child sexual abuse by Chris Badgley (1984) and Rix Rogers (1990) have served to focus national concerns about child abuse in Canada. Current federal initiatives concerning children are dependent for their effectiveness on the satisfactory resolution of a current dispute between the federal and provincial governments concerning the Canada

Assistance Plan (CAP), one of the major cost sharing programs in the child welfare sector. At the time of writing this report, it appeared that this dispute was being referred to the Courts.

The 1984 Badgley Report on Sexual Offenses Against Children found that every Canadian child is at risk of being sexually abused. From a random sample of over 2000 adults, Badgley found that almost one-third of the males and more than one-half of the females reported that they had been the victim of at least one unwanted sexual act. The percentage of abusers, the vast majority being males, was found to be relatively low because one abuser may offend against several victims.

Rix Rogers' 1990 report to the Minister of National Health and Welfare noted an "enormous increase" in official reports of child abuse in Canada since 1984 and found that

> Even using a very narrow definition of sexual abuse, it is clear that hundreds of thousands of Canadian children have been victims of sexual abuse. (p. 18)

Rogers suggested that abuse in the family was a symptom of underlying problems of poverty and economic stress, emotional difficulties of parents and lack of coping skills, inadequate parenting skills, communication and relationship problems, poor self-image and low self-esteem, and negative forces in the surrounding environment. He found that a great deal of positive reinforcement is needed if families were to be successful as society's primary agent of socialization and care of children. He suggested the need to empower children who often do not understand that they have the right to say "No".

The important relationship between child sexual abuse and broader concerns for the welfare of children in society was recognized by Rogers who stated that

> Child sexual abuse must be a priority for at least the next ten years, but it should be addressed within the broader context of children's well-being. (p. 14)

Rogers' report found an "atmosphere of crisis management" across the country with high caseloads, high turnovers of front-line staff and "constant budget limitations". He cited studies which established a "correlation between child sexual abuse and learning disabilities, drug/alcohol abuse, prostitution, runaway children, dysfunctional relationships, and crime" (p. 20), indicating the pressing need for service integration. The report stated that

> Above all, it is essential that we consider how to overhaul systems and priorities so that children receive comprehensive and integrated service, irrespective of jurisdictional boundaries and resource limitations.o (p. 25)

Other issues of particular relevance to this report that were addressed as part of the 74 recommendations made by Rogers to the Minister of National Health and Welfare included:

- The establishment of a Responsibility Centre for Children within the federal Ministry of National Health and Welfare in order to maintain a focus on children's issues and to provide a vehicle for planning and collaboration with other governments and sectors;
- Recommendations that provincial and territorial jurisdictions ensure that appropriate interdepartmental mechanisms are established to coordinate programs and resources;
- The establishment of effective screening mechanisms by provincial and territorial governments to ensure that those with a history of child abuse do not assume positions of responsibility for children;
- The need to strengthen child advocacy;
- The existence of appropriate and easily accessible provincial and territorial mechanisms for independently monitoring services for children and for the investigation of complaints by and on behalf of children.

Provinces and territories indicated to Rogers that they are unable to carry the burden of additional resource needs without additional cost-sharing arrangements with the federal government. A cost-sharing program was recommended that included the costs of mental health and social services for child victims of abuse, other family members and adult survivors, additional resources for "under-resourced front-line services," and support for local coordinating committees and child abuse coordinators.

Planning for the 90s in British Columbia

In B.C., the provincial government is responding to the recommendations of the Royal Commission Report on Education, has established a Royal Commission on Health Services and Costs, and is undertaking a review of the Family and Child Service Act, the Mental Health Act and the Community Care Facility Act, i.e. major pieces of legislation concerning children and youths. Significant resources have been allocated by government in support of families with special needs children and youths. A number of positive cross-ministry initiatives have been identified in this report.

Through an extensive process of consultation with this office during recent months, the Deputy Ministers' and Assistant Deputy Ministers' (ADMs') Committees on Social Policy have responded in a constructive manner to the concerns and recommendations in this report. They have stated their intent that this report serve as a stimulus to a careful review of existing structures and processes in place in order to ensure the provision of a comprehensive and coordinated spectrum of services for children and youths. Consensus exists about the need for improvements in this public service sector.

The following section of this report identifies areas of major concern to this office and recommends to government the need to achieve

- a unified approach within government to information-based policy and program development, and improved mechanisms of administrative accountability that reinforce and promote the need for a planned continuum of integrated multi-disciplinary services for children and youth with special needs,
- a comprehensive and consistently applied regulatory, contractual and administrative policy framework for setting, monitoring and enforcing standards of health, safety and care within publicly funded and regulated residential and day programs for children and youths with special needs, and
- strengthened cross-ministry administrative advocacy and fair internal and external review mechanisms intended to safeguard the rights of children, youths and their families who require publicly funded special services.

Following the recommendations, there is a summary of the results of extensive discussions held between the Ombudsman's office and the Deputy Ministers' and ADMs' Committees on Social Policy. This summary, prepared jointly by senior government officials and the Ombudsman's office, represents the significant level of consensus reached with the ministries during the consultation process. In the opinion of this office, this level of consensus provides great promise for children and youths in this province.

PART D

Analysis, Recommendations and Results of Consultations with Government Ministries

Children in society: the value context

Children are often referred to as our most valuable, and vulnerable, resource. Current cultural, economic, environmental and social problems will be inherited by future generations and significant investment in today's children will be required if these problems are to be lastingly resolved. There is a natural human tendency, reflected within political democratic structures, to think and plan in short-term cycles. This tendency must be tempered, and the need for long-range planning recognized, if we are to serve the best interests of future generations and preserve and strengthen the positive elements in society.

The manner in which families, communities and the broader society prepare children to assume adult responsibilities will, to a large extent, determine the quality of life of these future generations. At the same time, children must be allowed to enjoy a quality of life in immediate terms and not merely perceived to be in training for adulthood. In other words, children are persons in their own right.

Compared with many areas of the world, most British Columbian children live and grow with the benefits of an affluent society. Most are adequately protected, nurtured and supported within caring families which, in turn, are supported by community networks and publicly sponsored education, health and social services. But one in six children in Canada are reported to live below the poverty line and children are, in significant numbers, dependent upon food banks and other forms of social services to meet their most basic needs.

Poor children are at the greatest risk of experiencing ill-health and continue to be over-represented in child welfare, youth correctional and other social service systems. Growing up disadvantaged in an affluent society poses particular problems. Fundamental inequities become apparent to children at an early age as they compare their socio-economic status with that of their more fortunate classmates. The resultant sense of unfairness can result in low self-esteem, underachievement, and a debilitating sense of powerlessness in a society prone to measure "success" in terms of material possessions. Complacency must be guarded against, and lasting solutions must be sought to the cross-generational problems faced by many children, youths and their families.

While similar comprehensive data is not available in this province, a 1983 Child Health Study in Ontario estimated that 18% of all children in that province had one or more significant emotional and behavioural problems. These findings are consistent with a number of studies in different jurisdictions and indicate the seriousness and scope of pressures being experienced within our major universal child support systems — the family and the school. Increasingly, these systems are turning for help to the publicly funded social support systems.

The family and school in transition

The Sullivan Royal Commission noted that "Perhaps no social institution in North America has changed more dramatically since mid-century than the family". Families are smaller, increasingly headed by a lone parent, usually a woman living below the poverty line; divorce is more common and children are increasingly growing up in reconstituted families; a majority of women with school age children are in the labour force. Children today are maintained in a prolonged state of economic, political and legal dependence, and families increasingly require publicly funded services to assist them in their child-rearing duties.

Demographic and environmental influences in Ontario have pointed to significant trends which have provided the context for integrated planning by government in that province for children and youths with special needs. The Ontario Child Health Study found that

> Only 16% of Ontario families fit the traditional model — two parents, children, a father who goes out to work, and a wife who is at home. High divorce rates are coupled with increases in lone-parent households and blended and reconstituted families... As families' needs are changing, so are some of the childhood problems seen by children's programs working in the community (which) report that their clientele are presenting more complex and disturbing problems.

At a July 1989 Symposium on Families in Saskatchewan, sponsored by Canadian provinces at the direction of the 1988 Annual Premier's Conference, Dr. Susan McDaniel from the University of Alberta warned that

> Evidence is mounting that families are not the idealized havens we wish they could be... we cannot afford to glorify our images of what families should be... Family policies must be sensitive to families as they are, not as we might wish them to be... Family violence is underestimated — the family is now widely acknowledged as being *the* most dangerous place in society... Despite prevalent beliefs to the contrary and a fair measure of wishful thinking, families are *not* separate from society, *not* private places in which we retreat from society, but an integral part of society, and thus, intertwined with social changes in the wider world.

The definition of what a family is remains elusive, but some characteristics of a sound family policy were outlined by Dr. Carol Matusicky, Executive Director of the B.C. Council for the Family in a recent newsletter:

1. It must not diminish but facilitate the growth and strength of families; it must support families as they change;
2. It ought to acknowledge that all families are not equal (in terms of health, economic, and social resources);
3. It must legitimize caring for our young, old and each other as important work;
4. It must not glorify our images of what families should be;
5. It must respect the diversity and multiculturalism of Canada and the Charter of Rights (we are a society of minorities);
6. It must recapture the personal caring of the community;

Flexibility and inclusiveness, she said, must be the two hallmarks of family policy.

The transitional and vulnerable state of families within modern society places additional demands on support sectors — community services, day care, schools, and other public services — to ensure adequate sustenance and age-appropriate developmental opportunities for children. Parents increasingly require support in child rearing and often turn to the school as a major source for this support. The Sullivan Royal Commission on Education expressed serious concern about increasing expectations being placed on schools and found that

> Experienced teachers declared that considerable numbers of children today were not always "ready" for school in that their modes of behaviour, levels of self-sufficiency, and attitudes toward their work generally impeded their academic progress... The school, in effect, has come to be viewed, even by students

> themselves, as a haven in an uncertain world — a world in which family life is in transition.

The Commission was concerned that educators were not appropriately trained to provide counselling, mental health and other social services to needy children in the school setting and observed that

> ... the fact remains that the developmental and social capital needs of youngsters facing moderate to severe problems are not adequately addressed at present.

Recognizing that "the school is the only public agency required, by law, to deliver services to all children in a given age range", the Commission believed it to be "the natural site where integrated services might be planned and, indeed, delivered" by other social service agencies. This suggestion is worthy of careful consideration by the various ministries and community agencies that provide services to children and youths with special needs.

"At risk" children and the role of government

The Community Care Facility Act, Provincial Child Care Regulations (Part 1), defines special needs children as those with social, physical, mental or emotional handicaps that require additional support and services.

"Children at risk" is another commonly used term that is defined in different ways by different groups. While recognizing that "all children are *potentially* at risk due to their unique vulnerability and limited ability to ensure their own protection", the Deputy Ministers' Committee on Social Policy provided this office with a working definition of this term.

> For the purposes of this review, a child at risk has been described as a person under 19
>
> - whose health, safety or well being is jeopardized by the actions of others, his or her own actions, or special needs,
>
> - whose actions threaten the safety or well-being of others or the good order of the community; and/or
>
> - whose ability to reach his or her own potential to function as an independent member of the family or community is jeopardized.

Some recommendations in this report apply to the administration of public services for all children and youths with special needs, others are specific to particular "high risk" populations, for example, those children and youths who are placed out of their home in publicly funded and regulated residential resources or facilities. Further work is needed to more clearly define the special needs of, and services required by, particular groups of children and youths. While no simple definitions exist, research prepared for the Ministry of Community and Social Services in Ontario suggests that

> ... those disorders that emerge early and persist, or are most chronic, are conduct disorders and a number of debilitating and infrequent major mental disorders such as autism, schizophrenia and affective psychosis. These are the kinds of problems that appear to pose the longest burden of human suffering, and the greatest burden for service provision and dependence over a lifetime. ("Investing in Children", 1988, p. 42)

Increased government involvement in services to children, youths and families has resulted from significant changes in our society and public demand for resources. Population growth, demographic shifts, increased societal stress, changing family composition, population aging, urbanization, globalization, reduced volunteerism and increased expectation for government action are a few of the key changes. In recent times, society has become more willing and able to recognize the special problems and needs of children, youths and families.

Government currently divides services to children and youths between ministries on the basis of the type of problems addressed. Currently, six different ministries provide direct services, and others perform a policy coordination function. Government has defined the primary mandates of these ministries as follows:

- Ministry of Attorney General — legal representation for the Superintendent of Family and Child Service, legal aid, prosecution, victims and sexual assault services, public trustee and public legal education.
- Ministry of Education — overall policy and funding to school boards which provide a wide range of special education programs.
- Ministry of Health — medical services, hospitals and mental health services.
- Ministry of Labour and Consumer Services (Alcohol and Drug Programs) — public edu-

cation and treatment for substance dependency.

- Ministry of Social Services and Housing — family support services, protection of children and alternate care.

- Ministry of Solicitor General — law enforcement, correctional services, family court counselling and criminal injury compensation.

- Ministry of Native Affairs — liaison and co-ordination between government and Native communities.

- Ministry of Advanced Education, Training and Technology — the B.C. Youth Council, representing a youth perspective to government, reports to the Minister about matters affecting youth.

Major challenges exist if a responsive continuum of integrated, multi-disciplinary special services to children, youths and their families is to be planned, organized and implemented in British Columbia given the current separation of inter-related regulatory and administrative mandates across different pieces of legislation and among many different ministries.

Legislative planning and consolidation

As British Columbia prepares to review major pieces of legislation concerning children and youths, it is an opportune time for government to examine experiences in other jurisdictions closely, to consult broadly between ministries and with consumer, professional and community groups and organizations, and to consider the feasibility of consolidating legislative provisions and integrating administrative approaches to service delivery.

Exhaustive examinations in Quebec, Ontario, Nova Scotia and the United Kingdom have led to more consolidated and integrated legislative and administrative approaches to child, youth and family services in those jurisdictions. Quebec's integrated approach to services will be discussed later in this report.

Ontario's Child and Family Services Act

Ontario's Child and Family Services Act was proclaimed in late 1985 "in the spirit of the consolidation of children's services" and

> ... was designed to integrate principles and services for children with special needs under a single piece of legislation. This has been and continues to be an ambitious objective, but one to which the Ontario Government and the Children's Services Branch (of the Ministry of Community and Social Services (MCSS)) remain steadfastly committed.

With this legislative mandate to integrate service approaches, and based on broad community consultations, Ontario's Ministry of Community and Social Services has developed an overall strategic plan for children's services administered by that ministry, including plans for the six defined areas of

- child development service,
- child treatment service,
- child welfare service,
- community support service,
- young offenders service,
- child and family intervention service.

The problem analysis that preceded Ontario's decision to consolidate child, youth and family services also reflects this office's experience and concerns about current service fragmentation in British Columbia. For example, the need was identified to transform a "patchwork of services" into a "network of services" and that province's consolidated Child and Family Services Act was seen to enable service development

> ... around individual and local need rather than a clinical label, a social problem, an agency, or a legislative boundary. Until recently, the development of services was hampered by the presence of multiple, and sometimes contradictory, pieces of legislation governing distinct agencies. As is well known, the children most in need have a habit of crossing legislative, service and agency boundaries. Many of our most disturbed and complex clients use more than one service stream (e.g. child welfare, child treatment, young offenders). The flexible services concept represents significant progress towards building services around children. It is a step towards continuity and integration of service, and away from legislative and funding boundaries that separate service to children.

> Flexible services, combined with local planning, provide the potential for the first time to define and develop at the community level a range of services for children with special needs that reflects the needs of a particular community. ("Investing in Children", p. 5)

The Children's Bill in the United Kingdom

Following Lord Justice Butler-Sloss's Report of the Inquiry into Child Abuse in Cleveland, England (1987), a Children's Bill has been proposed to integrate the private and public law relating to children into a single rationalised system. The proposed legislation would replace seven existing Acts of Parliament and provide

> A single regime of rules (to) reform the current fragmented, overlapping and obscure provisions relating to children under the private law. Together with the public law reforms this would give a unified and consistent code in respect of the care and upbringing of children. ("Social and Cultural Affairs", May 1989, p. 207).

Under this Bill, local authorities would have a new duty to promote the upbringing of children in need by their families and an enhanced responsibility for assisting youth when they left the care of the authority. The Bill also proposed that any person, including the child whose legal position could be affected by the Court proceedings, would be entitled to party status before the Court (including, for example, grandparents who wish to care for a child). Provisions were made for the appointment of Guardians ad litem to safeguard the child's interests in all care proceedings, including those arising from family proceedings. The Bill also provided for the regulation of voluntary homes, private children's homes, private arrangements for fostering children and private day care facilities.

The Minister of State described the Bill as "the most comprehensive and far-reaching reform of child law to have come before Parliament in living memory" and saw it as an attempt "to establish a unified and consistent code of law covering the care and upbringing of children in both the private and public domains". The current children's legislation was seen to be confusing, piecemeal, outdated, often unfair and ineffective, especially with regard to protecting children at risk. Consensus was apparent in the United Kingdom that an appropriate balance had been achieved between the responsibility of parents and the rights of children.

Nova Scotia's Act Respecting Child and Family Services

In Nova Scotia, An Act Respecting Services to Children and their Families, the Protection of Children and Adoption (Bill 89) was assented to by the Lieutenant Governor on June 19, 1990. This legislation received all-party support in the legislature and, according to the Minister of Community Services, was developed following an "unprecedented" level of consultation, discussion, research and analysis. The Minister stated that "It is no longer possible for (child welfare and protection) services to have as their base, legislation which is vague or imprecise" (Assembly Debates, May 17, 1990, p. 3405). He identified four major elements of Bill 89:

1. *Opportunity*: For families to remain together and receive needed services; for agencies to more effectively help families through a broader range of positive more preventive services, and for professionals to work more cooperatively with families.

2. *Prevention:* Building on the principle of least intrusive intervention, to develop community based services which are more prevention-focused, providing support to families in difficult situations before more drastic intervention is required.

3. *Accountability:* To the Family Court for parents who do not improve the family situation by using support services and for agents who must justify decisions to apprehend children within five days.

4. *Community input:* Through the establishment of an advisory committee, to include consumers, to review the provision of services, report to the minister concerning the operation of the Act, and to advise whether the principles and purpose of the Act are being achieved.

(See Assembly Debates, May 17, 1990, p. 3406-7)

Speaking in support of Bill 89, the leader of the N.D.P., herself a social worker, spoke of "unmanageable social work caseloads" and stated that

> It is the staff in child welfare agencies who become the scapegoats for society's unwillingness or inability to put in place the kind of supports that are really necessary... the social workers are on the receiving end of the anger and frustration of families who think they have been ill-served by the child welfare system.

An 18 month stay in proclamation was required in order to build the expensive infrastructure, particularly the range of preventive services, required for effective implementation of Bill 89. Nova Scotia's consolidated legislation recognizes

- that children are entitled, to the extent they are capable of understanding, to be informed of their rights and freedoms, and to be heard in the course of and participate in the processes that lead to decisions that affect them,
- the family as the basic unit of society and the need to take reasonable measures to provide services to families and children that promote the integrity of the family,
- that social services are essential to prevent or alleviate the social and related economic problems of individuals and families,
- the need to provide, and establish standards for, training centres for mentally handicapped children, young offender facilities, residential assessment and treatment centres, and secure treatment facilities,
- the need for special attention to be paid to 16 to 19 year olds who may require special services and who may enter into agreements for services when not in the care of a parent or guardian, services to wards may also be extended to 21 years.
- the need for planning and continuity of care, education and religion, and the preservation of the child's cultural, racial and linguistic heritage. For children in permanent care, the agency must submit an annual written report to the Minister regarding each child's care and placement.
- a child to be in need of protective services where there is "substantial risk", i.e. a real chance of danger that is apparent on the evidence, of sexual abuse, emotional harm, physical harm (from chronic neglect or exposure to repeated domestic violence), or where the child is abandoned or is not being provided with required medical treatment or services required for a mental, emotional or developmental condition; or where a child under 12 years has killed or seriously injured another person,
- that foster parents who have cared for a child continuously for six months immediately prior to a hearing have standing to make submissions to the Court in access, permanent care and custody matters,
- the need for a Child Abuse Register to be used only for the purposes of research, investigating whether a child is in need of protection, and screening prospective adoptive and foster parents and staff and volunteers who work with or care for children,
- that an agency and a parent or guardian can agree to the appointment of a mediator to attempt to resolve matters relating to the child who is or may become a child in need of protective services and that a minor whose adoption is sought may appeal by his or her guardian ad litem.

These important initiatives, intended to consolidate legislation and integrate administrative approaches to service delivery for special needs children, youths and their families, provide useful examples of trends within other jurisdictions. The intent of ministries in this province to undertake comprehensive review of important legislation concerning children and youths is welcomed by this office and provides an opportunity to update and consolidate legislation in a highly inter-dependent service delivery sector.

Integrated provincial planning and policy development

Current problems and challenges in this public service sector are serious enough to warrant immediate action by government. But major systemic change must take place in a planned and sensitive manner. Precipitous implementation of change without adequate information, consultation and planning can be ineffective and may serve to increase the vulnerability of service consumers. The primary objectives of recommendations in this section are

a) to establish a more integrated provincial approach to policy and program development, planning, and administration of a continuum of multi-disciplinary services that are easily accessible to children, youths and their families and sensitive to community need,

b) to establish more comprehensive and consistent approaches to standard setting, monitoring and enforcement in child and youth care programs, and

c) to strengthen accountability, administrative advocacy and review mechanisms designed to safeguard the rights of children and youths requiring public services and to ensure that they are fairly heard and appropriately represented when important plans and decisions are being made that affect them.

This report follows that of the Royal Commission on Education and precedes one by the Royal Commission on Health Services. It is therefore timely to suggest the need for comprehensive review and change to the less high-profile but equally important sector providing public services to a highly vulnerable population. This office believes that the recommendations included in this report complement those of the Royal Commission on Education and reflect current and well documented trends in other jurisdictions.

A favourable response by government to recommendations in this report may not result in immediate changes at the community level. As a beginning step, this office believes that a specialized focal point within the provincial government is required with a formal cross-ministry mandate, the scope, and adequate resources to ensure integration of services to children, youths and their families at all administrative levels of the system.

Child, youth and family services, to be effective, must be planned, organized, administered and monitored through a dynamic and meaningful partnership among ministries and with communities. Strong, formal and ongoing links between local, regional and provincial levels are essential to ensure integrated and culturally sensitive approaches to service delivery.

Our analysis of IMCCs indicates that, in their current form, they lack the mandate, scope and resources to be fully effective. Regional IMCCs have no access to meaningful contact at the provincial level. Links between regional and local IMCCs, where they exist, are weak and informal. In recent years, IMCCs have acted more as informal networks than as a dynamic, meaningful link between communities and the provincial government on matters concerning children, youths and their families.

A single focal point within government with a formal mandate, executive powers and an adequate resource base is required if improvements are to be made which are meaningful, lasting and responsive to the special needs of children, youths and their families and communities. It is not within the scope of this report to assess the feasibility and cost-effectiveness of alternative organizational structures to support integrated services. This is the proper role of the executive branch of government in consultation with respective community, consumer and professional groups. Experiences in other sectors and jurisdictions and ideas promoted by various interest groups in this field have suggested options that are worthy of serious consideration by government and include:

1. A single ministry responsible for the administration of the major programs and services for special needs children, youths and their families;

2. The reorganization and consolidation of existing child, youth and family programs and services within two or three different ministries based on distinctions between involuntary and voluntry mandates;

3. A single ministry or Cabinet secretariat for child, youth and family services with a legislative mandate to ensure policy and planning coordination and service integration (similar to the functions of the Ministry of Native Affairs or the former secretariat established under the Environmental Land Use Committee (ELUC));

4. A legislative committee on child, youth and family services;

5. Strengthening the current organizational system to provide increased cross-ministry integration at the policy level by establishing a more specialized focus on children and youths under the direction of the Deputy Ministers' Committee on Social Policy with more effective links to communities.

Service integration at the local level depends on *the existence of a visible* mechanism within government with a formal mandate and adequate resources to provide the necessary policy direction and support. The desired objective is to establish a provincially driven, locally delivered system of child, youth and family services.

Recommendation #1

That a single authority within government be established with a formal mandate, executive powers and an adequate resource base to ensure uniform, integrated and client-centred provincial approaches to policy setting, planning and administration of publicly funded services to children, youths and their families.

Results of consultation with ministries

In response to this recommendation, the ministries have decided to establish a Child and Youth Secretariat comprised of a Standing Committee of Assistant Deputy Ministers (ADMs) with management level staff support and reporting directly to the Deputy Ministers' Committee on Social Policy. The Ministries of Health, Education, SSH and Solicitor General will each appoint an ADM with primary responsibility for matters concerning children and youths within their ministry. These designated ADMs will serve as core members of this policy-focused Secretariat. ADMs from other ministries providing services to children and youth will join this Secretariat as the agenda requires. Initially, the Child and Youth Secretariat will have the following mandate:

1. To provide leadership in defining, implementing, monitoring and evaluating the renewed and broadened mandate of regional and local IMCCs and to establish a formal provincial link to IMCCs whose mandate will include

a) providing advice to the Child and Youth Secretariat related to provincial cross-ministry systems reviews, program, policy and protocol development, resource allocation and other relevant administrative matters concerning the total spectrum of child and youth services in their defined area;

b) establishing formal links with communities and relevant child and youth focused groups and organizations intended to monitor and identify local program and service needs and ensure planned and integrated approaches to regional and local information gathering, program and service planning and monitoring, and policy and protocol implementation;

c) ensuring the existence of fair, effective and responsive cross-ministry case management practices and administrative review processes.

2. To undertake a two-year comprehensive province-wide review of the overall system of service delivery to children, youths and their families and, in consultation with IMCCs, community and consumer groups and organizations, and service providers, to make recommendations intended to strengthen integrated approaches to policy development, planning, monitoring and service delivery.

3. To ensure effective provincial coordination and implementation of existing and planned cross-ministry policy, protocol and program initiatives and to review and formulate responses to recommendations included in the Ombudsman's public report.

4. To establish formal liaison with the Ombudsman Office's child and youth team in order to identify and resolve matters of mutual concern regarding cross-ministry issues.

A total of at least three staff positions will be seconded from the respective ministries to work in the Child and Youth Secretariat under the direction of the ADM Standing Committee. Initially, these seconded appointments will be for a two-year term in order to ensure completion of the above tasks. It is intended that this staff working group establish a cross-ministry, inter-disciplinary culture and perspective within government that will enable it to support integrative approaches. Formal communication links will be established between this working group and IMCCs about matters of relevance to provincial policy and program planning. These will be management-level, in-service positions recruited by the ADM Standing Committee and will require expertise in policy development.

The need to integrate the planning and delivery of multi-disciplinary services to special needs children and youths, the nature of the mandate-spanning problems experienced by this vulnerable population, and the scope of services currently being provided by government, appear to this office to warrant the specialized attention of a single department, secretariat or ministry within government that is given the formal mandate, executive powers and resources to implement necessary changes.

Comprehensive information required for a planned and integrated system

The important and comprehensive mandate to be provided by the Deputy Ministers' Committee on Social Policy to the Child and Youth Secretariat will ensure that current cross-ministry initiatives and subsequent recommendations in this report will receive careful attention. The planning and organizational task that lies ahead for this Secretariat is a complex one and will require:

1. Access to comprehensive and accurate data and information of a cross-ministry nature that is necessary for informed policy development, program planning and subsequent recommendations;

2. Innovative approaches intended to improve current approaches to multi-disciplinary assessment, service delivery and case management;

3. Identification of current gaps and overlaps with a view to implementing a more effective and comprehensive continuum of special services to children and youths;

4. Formal links established with communities to reinforce the need for partnership and provide meaningful opportunities for consultation and joint planning;

5. An open and responsive organizational climate and a consultative management style that is child-centred and reflects the professional multi-disciplinary, multi-agency environment, and the complex and stressful nature of work in this public service sector.

Precise information is not available from government about the overall numbers of special needs children and youths who are placed in government operated, funded and regulated residential resources and facilities. As previously indicated, five ministries share administrative responsibilities in this sector of government operations and each has developed independent methods of collecting and analyzing information. Significant challenges exist in this cross-ministry sector if information based planning and decision making is to occur. This need has been recognized by senior government officials.

On June 21, 1990, an Assistant Deputy Minister in the Ministry of Health was reported (Times Colonist, June 22, p. A11) to have told the Royal Commission on Health Care and Costs that

> ... more information is essential if health professionals are to know the results of treatments and communities are to feel a sense of involvement... We must provide information, outline risk factors, show the outcome over time of positive health strategies... We need an information base that gets down to the community level. People want to become more involved in their own health, and we have learned that behaviour change comes about when people have a chance to participate."

He cited the need for "a better information base" and used one special needs youth population as an example:

> Better health data would also help the government tackle the teen-suicide issue, including keeping track of suicide attempts... Suicide is the second-highest cause of death nationally in the 15-24 age group. It's thought that there are 50 to 200 attempts for every one death. This issue points out the lack of an information base, because our knowledge of attempted suicides is not well-defined.

Policy makers and program planners require access to an improved cross-ministry information and data base to enhance effective short and long range planning and priority setting in this highly inter-dependent sector. Priority areas for research and program evaluation also need to be identified from a cross-ministry perspective with the objective of identifying promising preventative approaches. For example, areas requiring further study were identified in Ontario's consultation paper "Investing in Children" (p. 41) and included

a) the nature of disturbance in children currently receiving treatment and intervention services,

b) what program characteristics enable or impede the utilization of these services,

c) how the population using specialized services compares with that not using services,

d) the relationship between disorder and impairment,

e) which populations we are programming for, whose needs we are trying to meet.

There is a pressing need for more rigorous approaches to program evaluation in the child, youth and family service field. As was the case at Eagle Rock, subjective impressions about the effectiveness of a program are not always accurate or agreed upon. Each year, contracts worth millions of dollars are tendered by government officials to individuals and agencies providing services to children, youth and families with special needs. As was the case at Eagle Rock, little is known about the overall effectiveness of most of these programs because program objectives, where they exist at all, are often stated in vague and highly subjective terms. Formal and objective program evaluations are not routinely completed to guide ministries in planning and resource allocation activities in this sector. Priorities are set and resources allocated largely on the basis of "felt need".

In an article for the B.C. Council on the Family (Fall 1989), Barbara Nelson, Q.C. wrote about her experience as a lawyer who sat on the B.C. Law Reform Commission. In relation to family law, the Commission was asked to look again at the concept of a unified family court. Ms. Nelson wrote:

> I was aghast at the lack of reliable statistical information available in B.C., in Canada, and indeed in the common law world, yielding little ability to determine the cause of perceived problems. This posed significant problems, and led to recommendations based on hunches and educated guesses.

Improved cross-ministry information-based planning and decision making are required to ensure value for money and, in the longer term, can be expected to pay great dividends for future generations of special needs children, youths and their families.

Positive research initiatives in this area have been taken by government. For example, a one million dollar fund, sponsored by the B.C. Health Care Research Foundation, was recently announced for research demonstration projects promoting mental health, including evaluation of demonstration projects involving children and youths. The demographic data included in the 1990/91 "Business Plan" of the MSSH is a positive indicator of the type of corporate planning that will be required, on a cross-ministry basis, if serious efforts to plan, organize, monitor and evaluate an integrated service delivery system are to be realized.

It is expected that the establishment of the Child and Youth Secretariat will greatly enhance government's ability to focus, from a cross-ministry perspective, the needs and priorities in this area. This will require a common understanding between ministries about appropriate information sharing that does not violate the privacy rights of individuals or confidentiality provisions within respective enabling legislation.

Recommendation #2

That government review current approaches to the collection and analysis of non-identifying child-centred information and data and establish more compatible and comprehensive cross-ministry information systems that are accessible and useful to communities, policy makers, funders, researchers and service providers. Immediate activities to be explored should include:

a) Establishing, perhaps as part of a broadened mandate of IMCCs, improved cross-ministry resource and client based tracking systems that are sensitive to community need and confidentiality requirements,

b) Identifying the nature and extent of cross-ministry case overlap and analyzing the implications for policy and program planning and integrated service delivery.

Results of consultation with ministries

Information-based planning and decision making require comprehensive, current and accurate demographic information about children, youths and families in B.C. This information must reflect the highly inter-related nature of the health, education and social status of children, youths and their families and be relevant to planning needs at provincial, regional and community levels.

Each ministry has established its own information, resource and client based tracking systems. The Deputy Ministers' Committee on Social Policy believes that the MSSH Blueprint system, the Mental Health community survey for the purposes of planning, and the local community information, crisis and referral service have the most potential for cross-ministry adaptation. Integrated approaches to planning, resource allocation and service delivery require a common understanding of current trends and issues related to child, youth and family services. A client-centred approach is necessary in this complex, multi-service sector of the public service where the special needs of children and youths often transcend ministry boundaries.

The Deputy Ministers' Committee on Social Policy expects that a broader and revitalized mandate for IMCC's will result in improved cross-ministry case and resource tracking systems. Individual case management requires a common cross-ministry understanding about the rules of confidentiality pursuant to the respective legislation within individual ministries. Guidelines concerning cross-ministry information sharing, confidentiality and informed consents are required and could be considered for inclusion in a cross-ministry case management manual suggested by the Ombudsman.

A heightened emphasis on program evaluation and research in the field of child, youth and family services is necessary to assure consumers, service providers and the public that limited resources are being effectively and efficiently targeted and monitored based on sound information. Program evaluation and research activities will assist in efforts to identify promising preventative approaches that require priority attention.

Government ministries and the Ombudsman's office remain sensitive to traditional public mistrust about government information gathering. Great care is required in gathering information which is culturally and regionally sensitive and which links personal data across jurisdictions. The involvement of communities, perhaps through regional and local IMCCs, in the design and implementation of appropriate information gathering, tracking, research and evaluation will help allay public fears and act to ensure meaningful outcomes for consumers, service providers and others with a legitimate interest in this field.

The multi-disciplinary environment

Accurate and realistic assessments of the special needs of children, youths and their families are vital in establishing service goals and for accurately matching needs to available, appropriate services. Case management is then required to ensure implementation of the service plan and to monitor the appropriateness of services provided. These functions are carried out in a complex, multi-agency and multi-disciplinary environment.

Multi-disciplinary assessment and referral

Eagle Rock demonstrates the extent to which professional and agency perspectives can differ about the needs of a child or youth or the appropriateness of a particular service or program. If left unresolved, these difficulties can, and do, act to undermine the effectiveness of interventions and can be harmful to children.

When a special needs child or youth first comes to the attention of the mandated authorities, some form of assessment is required in order to establish

- whether parents are able to properly ensure the safety and well-being of the child or youth (the Family and Child Service Act),
- the need for, and suitability of an out-of-home placement, for example, a relative's home, an adoptive or foster home, a specialized facility or independent living (the Family and Child Service, GAIN and Adoption Acts),
- whether a child or youth is mentally ill or conduct-disordered and in need of in-patient or out-patient treatment (the Mental Health Act),
- whether the child or youth is learning-disabled or school-phobic and in need of special education services (the School Act),
- whether the youth is fit to stand trial or whether he or she was "insane" at the time

an offense was committed (the Young Offenders Act),

- the most appropriate disposition of the Court when the youth has been found guilty of an offense or if the youth should be detained for treatment, requiring the youth's consent and that of his or her parents (the Young Offenders Act),
- whether a child or youth is in need of treatment because of substance abuse,
- the most appropriate guardianship arrangement and custodial placement for the child or youth when a parental dispute exists (the Family Relations Act), or
- combinations of the above.

The common need for multi-disciplinary assessment to guide treatment or service planning is widely recognized in the child, youth and family services field. While highly specialized assessment services, for example those of a medical nature, may sometimes be indicated, most functional assessment information is gathered from children and youths, parents and service providers, often in consultation with medical practitioners, psychiatrists and psychologists. For Court purposes, assessments may be required from psychologists or psychiatrists.

Frequent overlap in assessments required for different ministries exists. For example:

- the child victim of abuse who is assessed to be in need of treatment,
- the family Court counsellor's assessment of a parental custody dispute in which allegations of abuse are made by one parent about the other parent,
- the young offender who is assessed to require out-of-home placement along with outpatient treatment,
- the apprehended youth who is found to have a substance abuse problem,
- the youth before the Court who requires a stable community residential placement or faces the alternative of incarceration,
- the MSSH child-in-care who is learning-disabled and in need of treatment services,
- the youth resident of a mental health facility where the assessment process has resulted in a decision that the youth not return to live with his or her parents upon discharge,
- combinations of the above.

A significant shift in approaches to assessment with special needs children and youths has been noted in Ontario where:

> ...there is a growing recognition that a pathology-focused assessment, formulation and treatment plan may make good sense as part of the picture for profoundly disturbed young people with traditional major mental disorders. This approach, however, must be coupled with an approach based on strengths and the development of skills necessary for daily living... For many young people, reframing their difficulty leads to the examination of the family, school and peer system to develop a comprehensive assessment and subsequent intervention and support strategy... the focus of intervention will tend to be here and now, and directed towards learning the skills to overcome or compensate for impairment. ("Investing in Children", pp. 23-24).

The assessment service is often the first point of contact of a special needs child or youth with the service delivery system. An expeditious, accurate and comprehensive assessment and appropriate referral at this stage is crucial to the child or youth as well as to the effective and efficient utilization of services. Undue delays, unnecessary duplicate assessments, incomplete or irrelevant assessments and inappropriate referrals lead to client and systems complications that can be expensive in human and financial terms.

Multi-disciplinary case management

Our concerns about cross-ministry case management practices and systems supports were described in an earlier section and have been the subject of ongoing discussions with government during the past three years. Implementing recommendations from an assessment of a child with special needs is often a complex and challenging task within a multi-ministry, multi-disciplinary environment.

Even in healthy families, disagreements frequently arise concerning a child and are lastingly overcome only through a process of effective communication based in a trusting relationship and mutual respect. When problems arise, family meetings may be called to seek consensual resolutions. Even young children are capable of participating in problem-solving processes and are usually more constructive participants when they feel that their perspectives are being fairly heard.

In the professional public service environment, the planning and problem-solving process is similar but more formal. The complexity and public nature of these services requires that case management be accountable, with systems support ensuring role and mandate clarity and access to necessary services. The fullest possible involvement of service consumers, including the child or youth, is essential to a fair process of case management. Consensus planning and decision making are the desired objective.

Effective multi-disciplinary case management can act to reconcile competing interests, identify common interests and seek a balanced and enduring resolution when disputes arise concerning the interests of special needs children and youths. An organizational environment which actively promotes participation, openness and consensus decision-making, while being mindful of the need to reasonably protect the privacy of clients, is clearly preferable to one which takes a defensive posture and is solely reliant on formal policies, lines of authority and narrowly defined mandates.

The Inter-Ministry Child Abuse Handbook is an example of how differing mandates and interests can be consensually defined in response to the common objective of protecting children and youths from abuse. This is one useful tool in encouraging cooperation between officials from different agencies and reducing the likelihood of conflict in child abuse investigations. Similar approaches that promote integrated case management are required in the broader sector of service delivery to special needs children, youths and families.

Child and youth care professionals are usually familiar with concepts of mediation and conflict resolution, but this awareness is not always appropriately translated into practice within a complex, multi-ministry and multi-disciplinary environment. Dispute resolution procedures that recognize the legitimacy of differing perspectives, promote the search for lasting and consensual resolutions, and fully involve the consumers, can act to reinforce fairness principles, increase trust and reduce the potential for conflict. Accountable case management has been described as

> ...an approach to service delivery that attempts to ensure that clients with complex, multiple problems and disabilities receive all the services they need in a timely and appropriate fashion. It is a boundary spanning approach in that, instead of providing a specific direct service, it utilizes case managers who link the client to the maze of direct service providers... designating one person as the case manager in an attempt to ensure that there is somebody accountable and who is helping the client hold the service delivery system accountable, someone who cannot "pass the buck" to another agency or individual when and if services are not delivered quickly and appropriately. (Encyclopedia of Social Work, 18th ed., Silver Spring, Md., USA, 1987, p. 212)

Since 1984 this office has noted improvements in case management practice within institutions, but planning problems still often occur at the point of discharge when institutional and community services must integrate their efforts in planning for a child or youth, especially those unable to return home. Failure to do so can result in harmful delays.

In varying degrees, the need for case management is recognized within the administrative policies and standards of different ministries. But a common cross-ministry, multi-disciplinary understanding and definition of case management remains elusive and only exists in limited, issue-specific areas such as child abuse investigations. Although well defined in the literature, case management training is not routinely provided as part of the curriculum in the work place or in professional schools.

The vexing problems of multi-agency and multi-disciplinary fragmentation are not new. In 1970, the Commission on Emotional and Learning Disorders in Children (CELDIC) Report took a three year look at Canada through the eyes of a child. What they saw distressed them greatly:

> If we were asked to put into a single word what distressed us most we would say divisions... We divide our services; health, education, welfare, corrections. We provide these through different levels of government... and through public and private endeavour. The

> people who provide service are divided... There are many different professions, and they all speak different languages. Their tribal jargon serves to separate professions from each other and from other potential helpers. No single factor has caused us more concern than the picture of different professions struggling to establish their own power base, distrustful of each other, refusing to share their so-called "confidential" information and in this division frequently foiling the child. (p. 1)

Twenty years later this office has noted similar concerns about fragmentation in this province. But these concerns are not unique to British Columbia. Rix Rogers, Special Advisor to the Minister of Health and Welfare on child sexual abuse, spent the past two years travelling across Canada and met about 1,600 people. He found that:

> One of our profound problems... is that our professional groups as a whole do not recognize that an issue such as child abuse is widespread or serious... This raises the question of professional schools. Professional societies as a whole and professional schools are not giving leadership in this area. Furthermore, no professional school I know of does multi-disciplinary training. (Vis-a-vis, National Newsletter on Family Violence, Canadian Council on Social Development, pp. 6-7).

Integrated multi-disciplinary approaches to case management are required which are authorized, understood and enthusiastically embraced by the various professional disciplines and effectively practised in the cross-ministry environment.

Multi-disciplinary counselling and treatment

The two major programs established to provide counselling and treatment for child and youth victims of abuse are the child and youth mental health system and the Criminal Injury Compensation program. Mental Health Centres are staffed by qualified professionals drawn primarily from the fields of psychiatry, psychology, nursing and social work. Currently, however, access to appointments for counselling and therapeutic services for children and youths with special needs depends on the availability of limited resources and lengthy waiting lists are common. The needs of children are immediate and prolonged delays in obtaining access to required therapeutic services can be harmful, particularly to victims of abuse.

Victims of abuse and other crimes may also access treatment through the Criminal Injury Compensation program, administered by the Workers' Compensation Board. The Criminal Injury Compensation Act provides for the provincial government to pay "compensation, within certain limits, for personal injury or death that results from a crime". Compensation is often provided through payment to psychologists, social workers or other child and youth professionals with varying qualifications, training and experience.

The significant increase in the utilization of Criminal Injury Compensation funds for the provision of treatment to child victims of abuse indicates the important role of this program in the broad area of children's mental health. Currently, however, this program is providing funds to many "counsellors" or "therapists" who are not accountable for their conduct to any professional body. While many of these individuals may be highly skilled and ethical in their practice, others may not be. When a victim, or someone acting on his or her behalf, complains about the conduct of a counsellor who is not a member of a regulated profession, Criminal Injury Compensation program officials have little recourse except to consider terminating funding. This is not a satisfactory solution. The victim is left without treatment support and the "counsellor" or "therapist" is free to continue practising without being subject to a thorough review of the appropriateness of his or her practices.

In a free market society, assumptions are made about the selective abilities of individuals who are shopping around for goods and services. Informed consumers will generally make sound purchases. But for vulnerable victims of crime and those in need of mental health treatment, the ability to make informed decisions cannot always be assumed. This is certainly true of child victims of abuse.

A significant proportion of counselling and treatment resources to child victims of abuse are funded through the Criminal Injury Compensation program. This office has been informed by government that it is acting to address these concerns through a cross-ministry committee established to address standards and evaluation procedures in this program area. It is expected that further progress in this area will result from careful monitoring provided by the Child and Youth Secretariat.

Multi-disciplinary roles

Regional inequities are apparent in a vast province where duly qualified and accountable professionals are often in short supply.

In many areas of the province consumers have limited access to specialized clinical services. Public awareness about child abuse has heightened dramatically in recent years and has led to increased reporting and the subsequent high demand for treatment. Child psychiatrists and psychologists are in great demand and short supply. For example, this province produces only one child psychiatrist per year.

In fact, many "hard to serve" children and youths are, by definition, resistant to traditional forms of verbal therapies and mental health treatment. Many of them do, however, require a thorough clinical assessment and a few may benefit at times from specialized medical and psychiatric interventions. A common, and paramount need for the great majority of these youths is the consistent availability of highly skilled primary caregivers and service providers with whom to form influential and lasting relationships. In turn, front-line service providers require access to appropriate education, training, and clinical consultants.

This office has noted with interest the innovative proposals of Forensic Youth Services to develop training approaches for parents, alternate caregivers and other professionals. Mental Health Centres have also allocated resources in support of child and youth residential caregivers. These are promising approaches that recognize the paramount importance for children and youths of the primary relationship. This relationship is usually developed with the caregiver most involved with the child or youth on a day-to-day basis.

The serious shortage and high cost of child psychiatrists, an evolving trend to more skill based, less pathologically focused treatment approaches, and an apparent rethinking within the psychiatric profession about its most useful role, suggest the need for updated role definitions among the various service providers. For example, a "strategic reorienting of child psychiatry" has been noted in Ontario:

> This reorienting appears as a move away from the huge range of childhood problems and intervention levels towards a renewed focus on diagnosis and treatment of major mental disorders, a related consultation role and increased emphasis on research and training. Some of these elements of balance between the pathological and the skill-development, educative approaches have been in place in European programs for some time. (p. 24).

This may be an appropriate subject for review and recommendations by the Royal Commission on Health Services and Costs. However, in our opinion, considerations about the child and youth mental health system must be addressed from a multi-ministry context which recognizes the nature of the close daily working relationships of mental health, child welfare, youth corrections, youth forensic, alcohol and drug and special education professionals and service providers.

Recommendation #3

That government, in consultation with relevant consumer groups, service providers, and professional schools and organizations, review current approaches intended to promote and support integrated, multi-disciplinary service delivery in the child, youth and family service field with the objective of

a) ensuring easy access to needed services for children and youths with special needs,

b) minimizing the need for unnecessary multiple assessments when more than one service may be required by a child or youth with special needs,

c) establishing multi-disciplinary, cross-ministry approaches to case management that reinforce the need for consumer participation and consensual approaches to service planning and decision making,

d) ensuring the appropriate regulation, monitoring and enforcement of practice standards for counsellors and therapists in private practice,

e) encouraging multi-disciplinary approaches to professional education, research

and staff development with particular attention paid to the training needs of front-line service providers,

f) effectively utilizing child psychiatrists and psychologists so that funding adequacy and flexibility enables their increased use as diagnosticians, consultants, researchers and trainers.

Results of consultation with ministries

Consensus exists about the need for integrated, multi-disciplinary approaches to service delivery in the child, youth and family service field. The effectiveness of a collaborative network depends upon well informed consumers and professionals who confer closely and ensure timely and appropriate responses to clients in a coordinated fashion. Barriers to such collaboration, where they exist, must be identified and removed.

The Deputy Ministers' Committee on Social Policy has identified the need for a flexible model whereby the formal and informal approaches which work can be supported and guided. Such a model involves the following:

1. An ecological perspective in the way service providers view the special needs of, and services to children and youths;
2. Individualized planning as reflected in case management plans that are responsive, current and functional;
3. Increased emphasis upon services in the mainstream of the community, and upon transitional services for children and youths receiving special programs or services so that they may, wherever possible, successfully re-enter the mainstream;
4. The capacity to respond individually, swiftly, and flexibly through appropriate service options that do not remove the individual from the mainstream of society;
5. The involvement of appropriately trained and qualified staff in the planning and case management of individual programs for children and youths with special needs;
6. Increased use of consultation and advocacy in the delivery of special services to children and youths with special needs;
7. Effective use of trans-disciplinary case management, whereby various service providers, representing various disciplines, learn what everyone else knows in terms of ways of viewing and responding to children and youths. In this manner each person is responsible for advocating a point of view, but is respectful of others' opinions and the need to seek consensual resolution when conflicts arise;
8. Clarification of the treatment component and the responsibilities for treatment.

The Ombudsman has suggested that a cross-ministry, multi-disciplinary case management manual may be a useful tool within the context of a revitalized and broadened mandate for IMCCs. This suggestion is currently under review by a task force established by the Deputy Ministers' Committee on Social Policy and will be fully considered by the Child and Youth Secretariat.

The need for clinical and professional standards of accountability for those private counsellors and therapists funded by the Criminal Injuries Compensation program has been recognized by government ministries and is presently being addressed through the Sexual Abuse Interventions Project. Continued monitoring and review by government is required so that vulnerable individuals are protected and private counsellors or therapists are held accountable for their practices in this largely unregulated field.

Well prepared and trained staff are the essential factor in the provision of a high standard of service to children, youths and families. Service providers must be able to work effectively in a complex, multi-disciplinary field. Close collaboration between government ministries and professional training schools is essential so that ministries' staffing and program needs, educational curricula and research plans are regularly reviewed. Increased emphasis on cross-disciplinary training for service providers in the field of child, youth and family services must be encouraged, for example those developed by the Justice Institute of B.C. and through the Inter-Ministry Child Abuse Handbook.

Changes in the way scarce mental health resources are organized and delivered have recognized the importance of providing strong support and consultation to front-line service providers. Inefficient use of scarce public resources can result if expensive and highly trained clinical resources are funded to provide direct services to individuals who may be more effectively served by other service providers who then require strong training and consultative support. The effective and efficient utilization of health care providers in the child, youth and family services sector must be considered in the context of the inter-dependent nature of professions and agencies operating in this field of practice. This is a subject worthy of close scrutiny by the B.C. Royal Commission on Health Services and Costs.

A continuum of appropriate services

The inappropriate placement of developmentally disabled, emotionally, behaviourally and psychologically disturbed youths at Eagle Rock, and longstanding concerns about the level and quality of care, education and training provided raises serious questions about the inadequate match between individual assessed needs and the provision of appropriate services based on the relative absence of, or serious gaps in, the planned continuum of services.

The Eagle Rock investigation found considerable consensus about the unsuitable nature of that program to appropriately address the level and seriousness of problems exhibited by many residents. A number of factors appear to have contributed to the inappropriate placement of a number of youths at Eagle Rock, including

- the lack of more appropriate resources,
- inadequate or inaccurate information about the program possessed by referring agents,
- pressures on referring agents to find an immediate placement for a "hard to serve" youth, and
- the refusal, in some cases, of more specialized (and expensive) resources to accept a youth.

Youth residents themselves noted the inappropriateness of placing developmentally disabled youths in a group resource with older "street-wise" youths, some with a significant history of delinquency. It is neither fair nor helpful to place blame on the referring social workers and probation officers for problems which appear endemic within the current service delivery system. Front-line staff require access to a planned continuum of appropriate multi-disciplinary services and programs at the preventative, secondary and tertiary levels of intervention if their referral and case management efforts are to be responsive to the special needs of children and youths.

Preventative interventions

Problems of fragmentation are compounded within a system where many different ministries plan and fund different parts of a service continuum, sometimes with minimal or no consultation. Consumer and service provider confusion is understandable when counselling, support and mediation services to children, youths and families with special needs may be provided or funded by the MSSH (Family and Children's Services or Handicapped Divisions), the Ministry of Health (Medical Services Plan, Mental Health or Forensic Youth Services), the Ministry of Solicitor General (Family Court Counsellors), the Ministry of Labour and Consumer Services (Alcohol and Drug Programs), or the W.C.B. (Criminal Injury Compensation).

The stated intent of this province's child welfare system, reflected in the administrative policies of ministries, is, wherever possible, to support the integrity of the family and assist the family to care for their child. The statutory mandate for child protective services does not, however, require the MSSH to satisfy the Court that, except when a child is in immediate danger, family support services have been offered or provided prior to apprehending a child and requesting a custody order. In fact, where counselling support services to a family are indicated, the MSSH has increasingly been referring clients to other systems, including mental health where demand has far exceeded that system's ability to respond. But the major infrastructure of community based support services to special needs children, youths and families, especially when outreach services or out-of-home placements are required, still exists within the MSSH system.

A system that has the capacity to identify problems at an early stage, to assess them accurately, and to intervene in a sensitive and integrated manner is one which is most likely to be effective in reducing the numbers of special needs children and youths who will later require expensive attention. Recognizing the inherent difficulties and cost-ineffectiveness of providing tertiary level services, Ontario's Ministry of Community and Social Services has suggested a strategy of targeting "at risk" groups for primary prevention in each area plan. A minimum of 3% of the area budget was suggested for this purpose. This approach ensures that proper attention is continuously paid to the preventive services sector.

Notwithstanding welcomed policy statements by government and recent funding initiatives intended to strengthen families, the mandate for preventive services in this province, particularly in the child welfare field, is not explicitly stated in legislation. Hence, preventive approaches have continued to be a low priority and particularly vulnerable during times of fiscal restraint. Long term costs may then be far higher than the short term savings made.

An ideal spectrum of services has been suggested in Ontario (see opposite) defining the types of services that are most appropriately delivered at the local, area, regional and provincial levels. A similar planned approach within this province, recognizing the importance of preventive approaches in the total service continuum, is worthy of serious consideration.

Secondary interventions

The troublesome nature of the behaviour of many children and youths with special needs can act to mask past victimization, their desperation and their need for stable, helping relationships. Specialized respite, short-term or long-term out-of-home placements may be required, with strong clinical supports, if these youths are to be given appropriate opportunities to break the destructive patterns of their behaviour. Referring professionals are very aware of the "shopping around" that occurs when they are attempting to find an out-of-home placement for "hard to serve" children and youths. This was a common experience for youths who were placed at Eagle Rock.

When the special problems of a child or youth require specialized interventions, it is desirable that, wherever feasible, these services be provided in the child's or youth's community. This office has frequently been told by service providers about children being placed outside of their homes in other, often distant, communities because of the lack of appropriate local resources. This was the case for a significant number of youths placed at Eagle Rock.

A recent former Minister of Social Services and Housing acknowledged that his Ministry was "getting more and more cases of troubled teens" and that resources were difficult to find. (The Province, July 20, 1989). In 1989, government announced that $1.7 million had been set aside to find homes for "children with exceptional needs" and to provide residential and non-residential service to "99 children who are substance abusers, victims of sexual abuse, multiple-handicapped, severely emotionally disturbed, or sex offenders returning to their own communities from (correctional) facilities." These "99 children" had been identified by MSSH officials in late 1987 and early 1988. A cross-ministry committee was established to oversee the distribution of these funds and MSSH regional directors were asked to take a lead role in developing proposals that

- dealt with one or more of the identified 99 children,
- involved a treatment "add-on" from the Ministries of Health or Labour and Consumer Services to a core MSSH program,
- involved a commitment by all ministries to make it work, and
- were deliverable and fully operational within six months.

Corrections Branch officials were to be involved in "identifying target populations and designing (program) proposals".

This was a welcomed response to an immediate need. It was not evident to this office, however, that this allocation of additional funds was made within the context of a widely communicated strategic plan within government to establish a more comprehensive and integrated cross-ministry continuum of services. In this case, the cross-ministry needs analysis and program planning process does not appear to have been comprehensive or rigorous. Limited and ad hoc responses to immediate and high profile issues in this field are not uncommon and may be well intended. But their lasting effectiveness may be seriously

AN IDEAL TREATMENT AND CHILD AND FAMILY INTERVENTION SERVICE SPECTRUM BY SERVICE AND PLANNING LEVEL WITHIN MCSS

LOCAL

- Assessment
- Non-residential services including:
  - child management training, parent groups
  - family support, counselling, therapy
  - individual counselling, therapy
  - social skill training/competency-focused interventions
  - day treatment/educational programs in care and treatment facilities
  - outreach programming to disturbed children and families
  - non-residential crisis outreach
  - inter-agency professional consultation on all of the above
  - service brokerage for individual families and community groups
  - support of voluntary and client-sector initiatives

AREA

- Residential services including
  - specialized foster care
  - gated and geographically linked short-term crisis stabilization
  - medium - to long-term residential care and treatment
  - educational programs in care and treatment facilities
  - Some specialized residential and non-residential services
  - Primary prevention programs for specific "at risk" populations
  - Supplementing of existing services for unusual service situations or times of dramatic transition in service demography
  - Multi-disciplinary training and education
  - Evaluation services

REGION

  - Highly specialized services:
    - one-stop multi-disciplinary assessment and consultation
    - direct services (residential and non-residential) to specialized populations (major psychiatric disorder, autism, dual diagnosis; and medical/emotional and behavioral disorders)
    - brokering of complex and unique case situations
    - custom-designed services for complex and unique case situations
    - development of technologically sophisticated research consultation, training and case consultation

PROVINCE

  - Child and family advocacy at all levels of service and government planning
  - Prevention, including inter-ministerial initiatives, of broad social and biological conditions underlying child and family disturbance
  - Facilitating and dissemination of research into causes of major child and family disturbance and effective interventions to reduce child and family disturbance
  - Coordination of large-scale special projects
  - Inter-ministerial differentiation of roles and service functions

(From "Investing in Children" A Consultation paper of the Ministry of Community and Social Services, Toronto, Ontario) limited when they evolve without benefit of careful strategic planning and implementation and with minimal attention to objective evaluation.

In a recent meeting, the director of a large contracted program for special needs children and youths informed us that he was currently negotiating with three departments of government to develop a program for special needs children that all agreed was needed. Agreement about the need and willingness by each party to cooperate in the program had not yet been translated into action because of administrative obstacles about how three departments could fund one program in a manner that was not administratively cumbersome for the contracting agency. The director expressed his wish that one day government officials from the respective ministries would come to him and say: "This is the provincial government's plan for organizing and delivering services to special needs children, youths and their families, and this is the role that we would like your agency to play in this plan."

In the course of investigating complaints involving special needs children and youths, this office routinely receives reports from government officials, contractors and other professionals about the relative absence of a broad strategic plan within government intended to ensure the existence of an integrated, cross-ministry, multi-disciplinary service continuum. Particular concerns are frequently expressed to this office about

- which ministry department is responsible for providing family support services, counselling and treatment when a child or youth has a special need,
- difficulties obtaining appropriate community residential resources for developmentally disabled, behaviorally and emotionally disturbed and mentally ill children and youths, including those with learning disabilities and substance abuse problems, who require out-of-home placement.

Tertiary interventions

These services are usually provided within institutional mental health and youth correctional settings. This office frequently investigates complaints about planning difficulties when a youth is ready for release or discharge from an institutional setting and cannot return home. Continuity of care and service is often disrupted when a child or youth is institutionalized and case management plans are not, in our experience, routinely developed to ensure

- meaningful continuing contact with communities, including parents or alternate caregivers, relatives, friends and service providers, during the period of institutionalization, or
- transitional planning to an appropriate community placement and required supports that can be implemented at the time of the child's or youth's planned release from the institution.

Additional pressure is placed on field staff when appropriate community based social and mental health services are not available for a youth. This can result in efforts to criminalize the youth's behaviour — often through enforcing relatively minor breaches of probation, for example curfew violations and non-association clauses — in order to gain access to correctional or forensic placements.

Youths placed in correctional facilities

A caring society is vigilant in protecting the safety of its citizens. It is also mindful of the need for young offenders to have access to appropriate treatment and rehabilitation programs. A significant proportion of young people in the youth correctional system are from poor families, many are learning disabled, developmentally handicapped and victims of past neglect and abuse. These are the products of their environment. Access to appropriate re-education and treatment for youthful offenders, while they are still young enough to be influenced in positive social directions, may ultimately be the best safeguard for an often fearful public. As stated by the Canadian Council on Children and Youth:

> Psychologist Carl Jesness said, "while our prediction (abilities) are not perfect, they are sufficiently accurate to be taken seriously and used in practice." We, as a community, must use this knowledge to invest in programs that would help high-risk children avoid involvement in criminal activities.

This office is hopeful of a balanced outcome in current efforts by the federal government to improve the Young Offenders Act and resultant program initiatives that might be implemented as a result of this review. However, the ultimate effectiveness of this legislation will, to a large extent, depend upon the availability of a range of appropriate programs for juveniles at the disposition stage.

In the Ombudsman's Public Report No. 17 on the Willingdon Youth Detention Centre, this office stated that

> The vexing problems of self-harm, victimization, inadequate facilities, appropriate staff levels and training, classification and segregation, and containment philosophy require specific attention by the Corrections Branch. They will also be the subject of continuing review by this office. (p. 21)

This report pointed out that youths in custody bring with them a host of physical, psychological and social needs and that, along with "supervision, discipline and control", the Y.O.A. recognizes that young offenders also have "special needs and require guidance and assistance". From a lay perspective, the psychiatric definition of "conduct disorder" would appear to apply to a significant proportion of young offenders within correctional facilities.

Promising initiatives have been taken to develop treatment and rehabilitation programs for certain groups of special needs youths in correctional facilities. Forensic Youth Services have established treatment programs for identified juvenile sex offenders. Recently, the Elizabeth Fry Society was chosen to initiate alcohol and drug counselling services for residents at two youth and two adult correctional centres. The society's newsletter (December 1989) stated that

> One of the most positive aspects of the service is the emphasis upon linkage with community resources so that, upon release, residents will receive follow-up treatment and support.

The limited availability of re-education, treatment and specialized services within correctional facilities is of continuing concern to this office and is at times cited as a contributing factor when youth Courts decide to raise a juvenile to the adult justice system. Corrections Branch officials have, however, noted the potential for the inappropriate use of the juvenile criminal justice system if it is perceived as a major source of treatment for troubled youths. The need to avoid criminalizing youth behaviours in order to obtain treatment depends upon integrated approaches among ministries to ensure access to treatment and special services for youths, regardless of their point of entry to the system.

Youths who are raised to adult Court

A 14 year old youth was charged with second degree murder as a result of the fire at Eagle Rock and was raised to adult Court for trial. In recent times, a small number of high profile cases have resulted in youths being transferred for trial to the adult Court.

Section 16(1) of the federal Young Offenders Act authorizes a youth Court to transfer a case to the adult Court where the youth is alleged to have committed an indictable offense and where the Court is of the opinion that it is "in the interests of society, having regard to the needs of the young person".

In considering an application for raising, the youth Court must take into account

- the seriousness of the alleged offense,
- the age, maturity, character and background of the young person,
- the adequacy of the Young Offenders Act and the Criminal Code,
- the availability of treatment or correctional resources,
- representations made by, or on behalf of, the young person or the Attorney General,
- other relevant factors. (Y.O.A. s.16(2))

B.C. compares favourably with other provinces in efforts to avoid inappropriate transfers of youths to the adult Courts. According to information provided to this office by the Deputy Ministers' Committee on Social Policy:

> Independent statistics compiled by the Canadian Centre for Justice Statistics indicate that in the five-year period between 1984/85 and 1988/89, a total of only 38 youths — or less than eight per year — in British Columbia were transferred to adult court. Compared to other provinces, on a per capita basis in the same period, the transfer rate in Alberta was nearly five times higher than in British Columbia. Manitoba's rate was more than six times higher; Quebec's and the Atlantic provinces' were double. Only Saskatchewan had a lower rate. (Ontario does not report statistics).

Occasionally, youth raised to adult Court have been assessed to be developmentally disabled. In one recent case, a youth who was raised was described by a youth Court judge as

> age 14 at the offense date, immature, small stature, generally passive, meek and subservient by nature, of low or borderline retardation, inadequate in and in need of life skills with respect to coping, schooling and peer relationships. He was a fetal alcohol baby at birth. (He) is generally viewed as a follower not a leader, a victim not a victimizer, but is also regarded as dangerous...

This youth had no prior record of criminal activity. In his reasons for judgment, the judge was particularly concerned about the long term institutional treatment that this youth was psychiatrically assessed to need:

> The problem is, essentially, how can you teach a low functioning offender to function over a period of time — that is the issue. Basically it cannot be done outside an institution over a long term period. There are no juvenile systems for the borderline retarded. Maples (Adolescent Treatment Centre) rejected (him) by reason of his intelligence. Through correctional facilities, Willingdon (Youth Detention Centre) has no facilities for mentally retarded persons and any program would have to be specifically developed for (this youth). He is not certifiable or committable so the Health Act facilities are not available. Abbotsford Federal Psychiatric Centre admits borderline aggressive, mildly retarded prisoners and is the only viable resource of this kind in British Columbia for either federal or provincial prisoners.

While some "discrepancy in evidence" occurred with regard to the dangerous nature of the youth's character and personality, this was not seen as decisive in any way by the youth Court which concluded that the youth may be incarcerated. The psychiatric assessment prepared for the youth Court found that

> Ideally, he should be placed in a programme of long-term duration in a secure setting in which he could be educated both academically and in social skills training, social responsibilities, life skills and cognitive training, especially in the moral development area regarding what is right and wrong. *There are no programmes of this type in the juvenile system.* (Our emphasis)

The assessing psychiatrist was unable to offer the Court a "clear opinion" with regard to the youth's continued danger to society and it was "unclear" as to what the boy would be like if he were to receive the maximum three year sentence under the Young Offenders Act.

In considering, among other matters, the youth's need for long term treatment beyond the three years allowed under the Young Offenders Act, and the "inadequacy of (juvenile) facilities available at the provincial level", the Court transferred the youth for trial (and subsequent conviction) in the adult Court.

It is not within the jurisdiction of the Ombudsman to comment on Court decisions or matters within federal jurisdiction. Our opinion has, however, been sought by federal government officials as part of their current review of the federal Young Offenders Act, and our major observations were as follows:

1. The maximum three year sentence permitted under the Young Offenders Act may not be adequate in responding to young offenders who are charged with serious crimes and who may require longer periods of Court ordered supervision within a juvenile correctional system. (Note: This inadequacy has been addressed in a Bill to amend the Y.O.A. tabled in the House of Commons in December 1989).

2. The absence of long term secure facilities with a treatment capacity in the juvenile correctional system appears to have been a significant factor in a number of Court decisions to raise juveniles to the adult Courts. The availability of such facilities, particularly for special needs youths, should be provided for as a function of federal-provincial agreements pertaining to young offender programs.

3. There appears to be a shortage of secure and open youth correctional facilities in British Columbia with appropriate programs for developmentally disabled and other special needs young offenders.

4. Children under 12 years of age who engage in "illegal" activity but who cannot be charged under the Young Offenders Act require an intensive and integrated service response from child welfare, children's mental health, special education and other services aimed at preventing later involvement in the youth and adult correctional systems.

The needs of children and youths assessed to require special care, management and treatment often transcend ministry service boundaries. In the interests of these young people, even of those deemed "hard to serve", these boundaries must be disassembled and an integrated service continuum developed. In the words of the CELDIC Report:

> Some children have different needs from others and it will be more difficult to meet these needs. But that is our problem, not theirs. We are the ones who must be ingenious. We are the ones that must pay the price. We cannot ask the child to pay for our failures of knowledge, our unwillingness to try, our resistance to expenditure of time and money, our rejection of the challenge. (p. 2)

Partnership with communities

Eagle Rock demonstrates the nature of problems that can occur in local communities when programs are developed for special needs individuals. Throughout the history of the program, tensions were apparent between local community residents and Eagle Rock. This is not an isolated example and, as the government policy of deinstitutionalization takes effect, greater expectations will be placed on communities throughout the province to integrate special needs populations.

The legislative mandate for the provision of special services to children and youths lies with the provincial government, but the effectiveness of service delivery requires meaningful partnerships with communities. Twenty years ago, the CELDIC Report recognized the importance of strong links between senior levels of government and communities:

> We are convinced that two things are required: much greater integration of the efforts of governments, not just at different levels but especially between departments and services; and far more responsibility for decisions that affect the life of a child to be taken by those who are close to the child... With the best of intentions in the world it is impossible for someone sitting in Ottawa or in a provincial capital miles away to decide what is best for any individual child; the state makes a poor parent. The decisions that affect how we will meet the child's need can be taken only in his (or her) local community where he (or she) can be viewed as a human being. He (or she) must be seen as a whole child in the context of his (or her) life situation, not as a problem, not as a case, a file or a number, but as a child who needs our help. (p. 8)

This report concluded that government's preoccupation with the day-to-day operation of services tended to distract from the development of clearly defined policies. Government's preferred role was seen to be

- long range planning and development of policies,
- establishment and maintenance of standards of care,
- evaluation and assessment of the effectiveness of local services and their accreditation,
- provision of professional consultants to local services,
- funding, in whole or in part, of local service programs,
- enforcement of the efficient use of these funds,
- responsibility for equitable distribution of funds according to the level of need of the local community,
- provision of staff training programs on a province-wide basis,
- funding and coordination of research.

The CELDIC Report called for provincial governments to divorce themselves from the direct provision of service and believed that local authorities should determine service priorities consistent with governmental legislation and policies. In order to ensure an informed policy making process, the report also recommended that an Advisory Council be established reporting to a Cabinet Committee on Personal Services.

Social services to children, youths and families in British Columbia have historically and variously been organized and delivered through municipalities, Children's Aid Societies, Community Resource Boards and, since 1977, through authority delegated by provincial government ministries through managers and supervisors to field staff in local district offices. Communications between local communities and the provincial government are currently achieved through

- Members of the Legislative Assembly,
- funding relationships with individual community based agencies,

- IMCCs and other informal inter-agency forums,
- liaison, usually issue specific, with municipalities, regional districts and the non-governmental sector,
- concerns expressed to the Ombudsman's office.

As indicated in the previous review of IMCCs, different ministry geographic boundaries, as well as other problems, have impeded progress in the establishment of effective, continuous links between government ministries and with communities in the child, youth and family services sector. Plans to broaden the mandate and scope of the IMCCs under the direction of a Child and Youth Secretariat, and an imminent resolution to boundary problems, will hopefully facilitate the strengthening of government and community relationships.

Planning for an effective provincially driven, locally delivered system of services to children, youths and their families will be best achieved through a broad consensus-seeking process involving

- consumers,
- child and youth advocacy groups,
- political parties,
- public servants,
- professional, community and voluntary organizations,
- service and contract organizations, and
- municipalities.

This will be an important aspect of the mandate of the Child and Youth Secretariat.

Organizational climate and management style

Quality assurance in the administration of public services, whether those services are provided directly by government or through grants to or contracts with private individuals and organizations, measures the fairness and effectiveness of public service delivery to individuals — in this case, children and youths.

Fairness involves more than legal authority. Laws accomplish a general purpose or define a specific goal; fairness requires justice in an individual situation. Unfairness includes improper discrimination, arbitrary oppressive behaviour, arrogance or rudeness, delay, failure to hear citizens affected by decisions, failure to communicate the reasons for decisions, and unreasonableness by public officials. (See Section 22, Ombudsman Act). Typically, actions or omissions which are unfair but not strictly unlawful may be difficult or impossible to challenge or rectify through the legal system. Achieving individual fairness depends largely on quality assurance in the administrative decisions, actions and practices of the government bureaucracy.

Quality assurance in any organization cannot be efficiently exercised by reviewing or inspecting every individual situation. Attitudes, policies and practices that are consistent with regulatory expectations must be established which also ingrain the notion of quality so that the right decision or action is taken as a matter of course. If the Ombudsman's office is to meet its broad mandate, it must assist the public service to promote a first-time quality approach to its responsibilities through the application of systems which are based in individual fairness. In turn, public servants deserve to work within a comprehensible regulatory framework.

As indicated in the Ombudsman's Public Report No. 7, the Workers' Compensation System Study (pp. 41-42), successful management practices are widely recognized as including a strong organizational emphasis on quality enhancement (Leonard and Sasser, Harvard Business Review, Sept./Oct. 1982; Garvin, Harvard Business Review, Sept./Oct. 1983). Essential elements of such a program are as follows:

- Quality enhancement requires a program in which everyone in the organization is responsible for quality. This organization-wide systems approach is based on participation and communication. The program should include a formal system of goal-setting, in which everyone is involved.
- A quality enhancement program should focus on training and development of both managers and staff. Continued commitment to quality is part of the daily operation of the organization; regular communication about quality can take the form of articles, posters, and meetings.

- A quality enhancement team, made up of individuals from different areas in the organization, should act as a resource and inspiration for first-level decision-makers, as well as for other staff and managers.
- The quality enhancement team should focus on training, communication, and continued commitment to quality in all levels of the organization. In this respect, the keeping of statistics helps to eliminate inconsistencies amongst various units and area offices regarding the application of policy. Resources are then directed to increasing consistency, fairness, and accuracy in decision-making. Membership on the team should be for a specific term, in the interests of encouraging system-wide participation and keeping the commitment to quality vigorous.
- An important component of quality enhancement is the internal review of possible adverse decisions. Internal review encourages a high level of accuracy and fairness in the initial decision-making.

The application of these principles and practices across public service departments that are concerned with the delivery of quality services to children, youths and families is strongly supported by this office.

The human services sector of government services, although often referred to as the "soft services", is a complex, stressful, demanding and potentially intrusive one. It is a sector where clients rely on continuous helping relationships with service providers but where high staff turnover is common. In many respects, it is a highly subjective field striving to understand, and respond effectively to complex human problems which are often not fully understood. It is a challenging field in which to set objective standards.

On a daily basis, service providers in this field are faced with clients experiencing the most powerful negative human emotions — depression, anger, hostility, frustration and mistrust. These are understandable reactions from individuals whose life experiences often include abuse, neglect, poverty, mental illness and other disabling conditions that contribute to a sense of powerlessness. Past negative experiences with adults in authority can lead to generalized expectations about unfair treatment at the hands of all authority figures. Past life experience may provide the context for understanding consumer mistrust of authority figures, but service providers are expected to deal in a professional manner with today's behaviour. The primary tool for influencing positive change in this field is the positive human relationship.

Widespread recognition of the child's need for continuity of care, (otherwise stated as continuity of quality relationships), is not easily translated into effective action within a large and complex bureaucracy. Children, youths, parents and alternate caregivers experiencing a change of social workers or probation officers can attest to the adjustments that they must make based on the workers' different styles, values and policy interpretations.

On a daily basis, this office deals with government officials and helping professionals across the province. While not always agreeing about what constitutes fair process for a particular complainant, we have been impressed by the dedication, caring and commitment of the great majority. We have also been concerned about the frequency with which concerns are expressed about low morale, heavy workloads and feelings of being unsupported. Some staff have told us that they are unable to keep up with the constant flow of administrative policies, operational directives, and cross-ministry protocols. Their professional interest in establishing helping relationships with children, youths and their families is often seen by them to be thwarted by limited resources and the demands of administrative accountability.

The development of creative approaches to personnel management in this sector of government operations must comply with established public service and collective bargaining criteria. Innovative labour/management/contract approaches are required, intended to recruit and retain qualified service providers, increase job satisfaction, and reduce high staff turnover. The objective is a high quality of service to, and continuity of the helping relationships with, special needs children, youths and their families. Recent initiatives within MSSH to streamline and reduce paperwork in order to free staff to work with clients and attempts to strengthen training and supervisory supports to line staff are indicators of positive trends.

It is beyond the scope of this report and the mandate of this office to examine the full range of sensitive management and personnel issues that are properly addressed through collective bargaining and contract administration processes. But when the needs of a special needs child in the care of a government department are not appropriately and fairly met in a timely manner because of heavy workloads, mandate confusion or gaps in the service continuum, these concerns must be acknowledged as they are vital components of quality assurance and fair administration.

When children fall through the gaps established by professional and agency boundaries, the service provider's sense of accomplishment diminishes. This report's intent to stimulate positive changes in the way services are organized and provided to special needs children and youths will, it is hoped, be responsive to the needs of government officials most of whom are, above all, concerned for the best interests of the children and youths with whom they work.

Recommendation #4

That the Child and Youth Secretariat undertake a comprehensive review of the cross-ministry service delivery system to children and youths with special needs and their families, and, in consultation with communities, consumers and service providers, formulate recommendations to government within two years, intended to ensure

a) integrated approaches to information-based planning, policy and program development and service delivery,

b) the existence of a culturally appropriate and regionally sensitive continuum of multidisciplinary services that are easily accessible to special needs children, youths and their families,

c) a special focus on the need to develop responsive, locally accessible preventive services that support families and ensure the safety, health and well-being of children and youths,

d) the existence of formal and effective links with communities in planning, organizing, delivering, monitoring and evaluating publicly funded services.

Results of consultation with ministries

The need for continuous review of the complex spectrum of cross-ministry services to special needs children, youths and families is recognized by government ministries. For example, in the fall of 1989 an assessment of Children at Risk was undertaken at the direction of the Deputy Ministers' Committee on Social Policy. Four sub-groups of children at risk were selected for specific consideration:

- child victims of sexual abuse,
- children with severe handicaps,
- adolescents with multiple problems,
- Native children.

Although an extensive range of public services is provided, some identifiable overlaps, gaps and conflicts were found that may result in confusion to consumers and in some children being under-served or inappropriately served. Many of these overlaps, gaps and conflicts are being addressed, without budget increases, through

- continued intra- and inter-ministry coordination and integration of services,
- clarification of ministry roles and responsibilities,
- review of existing services on a community-by-community basis to assess the adequacy of existing programs to meet local needs, particularly in the areas of prevention and early intervention, and
- strategic planning at all levels of the system.

Strategies considered by government ministries for meeting the needs of special needs children, youths and their families include

1. available preventive strategies, early assessment and intervention,
2. increased federal participation, for example, in funding Indian Child and Family Services
3. limiting the jurisdictions of one or more ministries,
4. expansion of inter-ministry protocols,
5. improving long range strategic planning,
6. further decentralization of services,

7. reallocation of existing resources, and

8. reorganization of the service delivery systems.

Notwithstanding the existence of many responsive and innovative programs, there is consensus that the service delivery system can be improved. Common cross-ministry principles and goals can be identified which may then form the foundation of an integrated child, youth and family serving system. The Child and Youth Secretariat is intended to provide a focal point for policy development within government with a formal mandate, executive powers and adequate resources to ensure uniform and integrated approaches to service delivery. Options that will be carefully considered by this Committee as part of the comprehensive review of services include, but are not limited to

- continuation, based on established effectiveness, of the Child and Youth Secretariat under the direction of the Deputy Ministers' Committee on Social Policy and with formal links to a revitalized IMCC system,
- establishing a single authority with a policy coordination role in matters concerning children, youths and their families,
- establishing a single ministry responsible for the administration of services and programs for special needs children, youths and their families,
- establishing a Cabinet Secretariat for child, youth and family services.

Consensus is apparent about the need for integrated, cross-disciplinary approaches to service delivery in the child, youth and family service field. The optimum organizational structure within government to most effectively implement this goal remains the subject of debate among interested parties. The comprehensive and consultative review process to be undertaken by the Child and Youth Secretariat will provide a focus for this debate and, within two years, recommendations will be formulated for government that reflect the need for broad consensus.

Health, safety and care standards in child and youth programs

Inadequate enforcement of licensing provisions, the relative absence of standards established through contracts with Eagle Rock, and ineffective coordination between licensing and contracting authority officials in monitoring the program, suggest the need for a thorough review by government of current methods used to establish, monitor and enforce standards in residential and day programs for children and youths with special needs.

A prerequisite to quality child and youth programs is the existence of explicitly stated, objective standards against which performance can be measured and accountability to consumers and the public assured. Standards are currently established through

- licensing requirements established pursuant to the Community Care Facility Act and Provincial Child Care Regulations,
- the enabling legislation of individual ministries providing services to children and youth,
- the contracting process between individual ministries and private individuals, incorporated or non-profit agencies,
- individual ministry administrative policies and procedures, and
- cross-ministry protocols.

Additionally, statute-based standards exist to regulate some, but by no means all, professions practising in the public service sector of the child, youth and family services field.

The limited scope of licensing in child and youth facilities

The Community Care Facility Act and Provincial Child Care Regulations made pursuant to that Act establish minimum standards that must be met in licensed day care and residential child care facilities. Many residential child and youth care resources are, however, exempted from compliance with these standards. These include

- resources where fewer than three residents are placed,
- MSSH foster homes,

- designated correctional youth containment centres, and
- approved homes under the Mental Health Act.

These exemptions mean that a large proportion of children and youths placed in state-funded residential resources are not protected by legislated minimum standards of health, safety and care required by the Community Care Facility Act and Provincial Child Care Regulations.

All children and youth placed in state-operated, funded or regulated residential resources or facilities are, by definition, vulnerable young people with special needs. Many are placed in the MSSH foster home system. Pursuant to MSSH policy, foster parents may operate a home for up to six special needs children or youths and still be exempt from licensing requirements. A society- sponsored parent model group home for three children or youths, on the other hand, is required to be licensed under the Community Care Facility Act and Provincial Child Care Regulations.

Valid distinctions are no longer apparent between the traditional "voluntary" foster home, usually exempt from licensing provisions, and specialized residential programs which are often required to be licensed. The nature of foster care has changed dramatically in recent years to accommodate an increasing proportion of children and youths with serious disabilities. In increasing numbers, foster parents view themselves as full-time professionals deserving adequate financial compensation for their efforts. A paper on "Specialized Family Foster Care" prepared by Jake Terpstra, a Licensing Specialist with the Children's Bureau, U.S. Department of Health and Human Services, states

> ... that to understand Specialized Family Foster Care one must discard nearly all preconceived ideas about regular foster care, thinking instead of the program of a residential treatment setting and applying that to a family setting... In Florida, the concept that evolved... was that of an institution without walls.

Information received from MSSH, Corrections Branch and Ministry of Health licensing officials indicates that there may currently be hundreds of children and youths across the province residing in contracted residential facilities that should be, but are not, licensed. Thousands more reside in provincially funded residential resources which are exempted from statutory safeguards intended through the provisions of the Community Care Facility Act and Provincial Child Care Regulations.

While the empowering legislation of funding authorities such as the Corrections Branch includes specific provisions for standards setting, monitoring and enforcement within designated correctional facilities, the same is not true for funding authorities such as the MSSH where, for example, the Family and Child Service Act is virtually silent with regard to standards, and Alcohol and Drug Programs, where no enabling legislation exists to establish a statutory basis for standards.

The basic safety, health and care needs of children and youths are similar and can be defined. The uneven, inconsistent and seriously limited application, within and across ministries, of existing regulatory minimum standards of health, safety and care in residential and day programs for children and youths no longer appears appropriate.

Monitoring and enforcing regulatory standards

This report has identified problems that existed at Eagle Rock among contracting, referring and licensing officials who appeared at times to be confused about their mutual responsibilities for monitoring and enforcing the minimum standards of care required by the Community Care Facility Act and Provincial Child Care Regulations. The licensing role was not well understood by officials from the contracting authorities, and licensing officials did not appear well informed about the resource approval and monitoring functions of the contracting authorities. Formal cross-ministry protocols did not and, to this point, do not exist to define respective roles of licensing and contracting authority officials, except in matters of child abuse investigations within licensed facilities.

As was the case at Eagle Rock, licensing and fire safety officials are often asked to recommend licenses for facilities that are already in operation. This leads to considerable pressure to recommend an interim license for facilities which are not operating in compliance with required minimum standards. The alternative is, in effect, to require the eviction of vulnerable, difficult to place residents.

Informally, licensing officials view the contracting authority as being primarily responsible for monitoring care and program standards while they monitor health and safety matters in liaison with the Fire Commissioner and other relevant authorities. However, the Community Care Facility Act and Provincial Child Care Regulations are more specific in terms of regulatory expectations about minimum standards of care than is, for example, the Family and Child Service Act. This assumes that ultimate accountability for care and program standards rests with licensing officials.

Section 29 of the Provincial Child Care Regulations requires a facility operator to provide a comprehensive and coordinated program of activities designed for the development, care and protection of children that is age and developmentally appropriate. Programs are required that are intended to develop the physical, intellectual, language, emotional and social skills of children.

In practice, government officials have recognized that licensing officials — Public Health Inspectors and Nurses — are not well trained to monitor residential child and youth care programs. In turn, contracting authority personnel are not routinely trained to monitor the environmental health and safety aspects of a program. Proper program standards monitoring in the child and youth services field requires the expertise of trained, knowledgeable and experienced child and youth care professionals with ready access, when necessary, to the specialized expertise of health and fire safety officials. The trend towards placing most children and youths in alternate family or parent model placements requires a much stronger focus on issues of quality care. Good caregivers will, on their own initiative, ensure the safety of their home in accordance with the relevant regulations and by-laws. The facility-focused nature of licensing is based on the outdated models of large institutional care.

But the Community Care Facility Act and Regulations pursuant to that Act are primarily intended to address the needs of vulnerable adults in residential care and young children in day care situations. Regulatory standards for adult residential and child day care facilities are specified in far greater detail than are those for child and youth residential facilities. Hence, residential and day programs for youths with special needs have traditionally been a lower priority for Licensing Officers whose workload pressures have often impeded frequent inspections. In fact, requirement for annual inspections of licensed facilities was removed from Provincial Child Care Regulations when it was realized that the licensing staff could not cope with the workload.

Contracting and funding agency officials usually make more frequent visits to their contracted facilities than licensing officials. MSSH staff can certainly not be faulted for the frequency of their visits to Eagle Rock, particularly during the months preceding the fatal fire. Significant local MSSH resources were assigned to that facility in part because of the problems which they knew existed there. MSSH liaison staff assigned to Eagle Rock were, however, often concerned with informally setting the expectations of their ministry about the program, rather than monitoring or enforcing established regulatory standards.

This office believes that statute-based minimum standards of health, safety and care are essential for the protection and well being of children and youths, particularly those placed out of their homes in provincially funded facilities. But standards, even those enshrined in legislation, are meaningless without appropriate monitoring and enforcement. Regular inspections of facilities are necessary and must ensure compliance with established regulatory standards. The responsibilities for monitoring programs may require the involvement of professionals from different parts of the system, but ultimate accountability should be clear to all and established in law.

Human resources in child and youth programs

One of the most consistent and serious concerns about Eagle Rock was the program's inability to recruit, train, supervise and retain staff who possessed the necessary skills and experience to work with special needs youths. The greatest single assurance of quality in a residential special care program is the presence of caring, skilled and experienced staff and caregivers, who are appropriately trained and provided with adequate supervisory, case management, and clinical consultation support.

Operator and staff qualifications

Licensing provisions define quite specifically the qualifications of persons in charge and staff of child day care and adult residential care facilities. The same is not true for equally vulnerable children or youths placed in licensed residential facilities. Section 6 of the Provincial Child Care Regulations requires residential child care facility operators to employ "responsible adults" who must, pursuant to Section 10 be of good character, have reached 19 years of age, be able to provide care and mature guidance to children, and either have completed a course on the care of *young children* or have relevant work experience. (Our emphasis).

These cannot be considered as rigorous or, with the exception of the age requirement, objective standards. The reference to "young children" is an indicator of the lack of understanding in licensing regulations about the real nature of residential and day programs for special needs children and youths.

With vague and limited regulatory guidelines, field officials have broad discretion, which must then be structured through contracts and administrative policy, when screening and selecting potential operators of licensed facilities. Under current regulatory guidelines, virtually anyone who can write a program proposal could qualify to operate a publicly funded residential child or youth care facility. When he initially received funding, the operator of Eagle Rock had no previous directly related experience; subsequently he was reported to be rarely on site; and yet for some years he was viewed as the person in charge of the facility. Government essentially bought an idea, a good idea perhaps, but one which was clearly not properly put into effect by an inexperienced operator.

Children and youths who attend school are taught by qualified teachers. Vulnerable children and youth placed out of their home in state-funded residential programs, and their families, deserve similar assurances about the professional qualifications of adults charged with their 24-hour-a-day care. Appropriate screening of individuals who may pose a risk to children and the ability to provide "mature guidance", however that may be measured, are important. But more comprehensive and precise expectations about the qualifications of service providers are required that provide public assurances about the quality of special care and treatment being provided to children and youths in this province.

British Columbia is fortunate to have applied professional training programs at community college and university levels in social work, nursing, criminology and other applied disciplines, and is one of only two provinces in Canada offering professional degrees in child and youth care. Current initiatives by the MSSH and the B.C. Federation of Foster Parent Associations to establish training curricula for foster parents deserve strong government support for their full implementation. These examples suggest the existence in this province of an impressive resource pool to assist government in efforts to define, from a multi-disciplinary perspective, more comprehensive and precise regulatory standards for practitioners in the child and youth care field. Of paramount importance to children and youths with special needs, especially those placed away from their homes, is the caring, skill and expertise of front-line service providers.

Staffing ratios and levels of supervision

Contracting authorities have broad administrative discretion to decide the staff/child ratios and levels of supervision expected in residential and day programs for children and youths. Regulatory guidelines or cross-ministry protocols do not exist to ensure that similar types of facilities are staffed at similar levels. Similar categories of contracted residential programs within one ministry may vary significantly in terms of staffing allocations, even when these programs are designed to serve a similar population of children or youths.

Regulatory expectations about appropriate staff/child ratios are specifically defined for special needs day care centres. In residential child and youth care facilities, Provincial Child Care Regulations [Section 70(1)] merely require that licensed facilities set ratios "appropriate to the needs of the children and the type of care required".

Contracting authorities' administrative discretion with respect to staffing ratios is further complicated by funding availability. With about 80% of budget allocated to salaries and benefits, any contracts which do not fully allow for inflation lead to staffing adjustments: fewer staff, emphasis on recruiting in the lower salary ranges (less qualified or less experienced), erosion of salary scales, delayed filling of vacant positions leading to temporary under-staffing, and reduced training budgets. Some contract agencies are reporting difficulties in recruitment as a result of salary erosion over several years.

Regulatory provisions are also inadequate for the levels of supervision expected within similar categories of state funded or regulated residential child and youth care programs. Residential programs serving similar child or youth populations referred by the same ministry can vary greatly in terms of the levels of supervision that are expected by contract. For example, Eagle Rock, funded to serve youths assessed with serious levels of disturbance, was not funded to provide awake overnight staff. When the fatal fire was set, the sole staff person on duty was asleep and was awakened by a youth resident. If someone attempted to set a fire in a similar facility which was funded to provide an awake overnight staff, it is reasonable to assume that the fire would not be set, or would be extinguished, or that residents would be evacuated without loss of life.

Provincial Child Care Regulations relating to child *day* care facilities require that when a sleep-over occurs, there be an awake staff or that the staff person sleep in the same room as the children. Section 65 of the Provincial Child Care Regulations defines a licensed residential child care facility as one

> . . . in which care and opportunities for social, emotional, physical and intellectual growth are provided to children placed in the facility to receive *24 hours of care and supervision a day*. . . . (Our emphasis)

The nature of the required 24 hours of care and supervision is not defined. Licensing and contracting authorities have not consistently interpreted this to mean that an awake staff should be provided during the night-time period. It would be inappropriate for staff to sleep in the same room with adolescents.

Eagle Rock demonstrates that special needs children or youths cannot routinely be expected to fall asleep when staff retire for the evening. Night-time is known as a fearful time for some children and youths. As previously mentioned, former Eagle Rock residents told this office that youths were often active after staff retired for the evening. Smoking in the bedrooms and raiding the fridge were favourite activities. Batteries were reported to be removed from smoke detectors, preventing detection of smoking in the bedrooms, a forbidden activity.

Failing to provide *24 hour* care and supervision through adequate numbers of appropriately qualified staff in residential programs for seriously disturbed or disabled children or youths, particularly when placement occurs with little knowledge of a child's prior history, (for example receiving and assessment homes), may increase the likelihood of tragedies occurring.

Comprehensive regulatory standards needed

The scope of statutory licensing provisions in residential and day programs for the care of children and youths is seriously limited. Safeguards for children and youths placed into state care are unevenly regulated, and inconsistently applied and enforced within and across different contracting authorities. Inequities are apparent in funding allocations to similar programs and resources, resulting in significant variance in staffing patterns. Hence, one youth placed in a residential provincially funded facility or resource may receive a significantly inferior service to that provided to another youth with similar needs who is placed in a similar type of facility or resource. This constitutes improper discrimination among children in similar circumstances.

In a 1987 "Handbook for Writing Licensing Rules for Human Services", Jake Terpstra, Licensing Specialist, U.S. Department of Health and Human Services and David Ditmar, Division of Child Welfare Licensing, Michigan Department of Social Services, state the following principle:

> Fairness requires that placement and out-of-home child care should be regulated in a consistent and organized manner... The regulation of placement and out-of-home child care recognizes, *regardless of the setting*, that children have common needs for a safe and healthy environment, adequate facilities and equipment, a defined program and competent caregivers. (p. 19, Our emphasis)

The Child Welfare League of America (CWLA), the leading standard-setter in North America for over sixty years, has taken the position that

> Legislative provisions should promote, safeguard and protect the welfare and rights of children, and ensure establishment and enforcement of standards for social services to children and their parents. (Standards for Foster Family Service, Revised 1975, Washington DC, p. 104)

CWLA standards also state that

> Licensing should be required (by state departments administering social services) for all foster homes that provide temporary or permanent care for one or more children not related to the foster parents, whether or not these homes receive compensation for care of the child... Provisions for enforcement, including penalties, should be incorporated in legislation.

This office agrees with the CWLA position while recognizing that much remains to be done to reduce fears among service providers about the implication of standard setting initiatives. In part, these concerns appear to be based in perceptions about the rigid application and expensive nature of current facility-focused licensing standards.

Recent amendments to the Community Care Facility Act (Section 5(a)(iii)) are intended to allow smaller licensed facilities, such as group homes, to be established in residential neighbourhoods without being precluded by local zoning bylaws. A Building/Fire Standards Criteria Committee has been established by government to develop, in consultation with the Union of B.C. Municipalities and other relevant agencies, appropriate building/fire requirements for smaller licensed residential care facilities.

For most service providers, the quality of care, program standards and caregiver skills are of paramount importance. Current approaches to licensing in British Columbia are predominantly concerned with objective standards related to facilities and do not adequately emphasize care, program and staffing standards for residential child and youth facilities. They are also primarily concerned with adult care and child *day care* facilities and are inadequate in defining, monitoring and enforcing standards in child and youth residential and day program facilities. They do not have the regulatory scope to address the expanding range of parent model and family based residential programs. They are often inadequate in defining licensing and funding authority roles and accountability and appear outdated and unclear about which child and youth care programs should be exempted from licensing requirements.

With optimism, this office has noted the leadership role being played by important professional and service organizations in support of efforts within individual ministries to establish and refine administrative standards of care. These initiatives can act as a sound foundation for a more comprehensive and integrated approach across government. In our opinion, legislative initiatives should act to guide this process more explicitly. Each child or youth who is placed away from her or his family into a government operated, funded or regulated program, regardless of its size or type, deserves the protection of consistently applied minimum regulatory standards. A comprehensive but common-sense approach to regulatory licensing or certification is required that

a) ensures the basic needs of children and youths for emotional support, safety, special care and appropriate activities,

b) recognizes the distinctive and specialized nature of residential child and youth care,

c) explicitly defines similar categories of provincially operated and funded resources and facilities,

d) is sensitive to the range of appropriate living accommodations within different cultures and communities, and

e) reinforces the need for cross-ministry consistency in setting, monitoring and enforcing minimum standards of care.

Summary

Eagle Rock did *not* lead this office to conclude that the major problems existed because of the actions or inactions of individual public servants or contract employees who, in many cases, displayed a genuine concern for youth. To cast blame on the individuals involved would be to miss the opportunity to examine weaknesses which exist in the complex cross-ministry and multi-agency system within which these persons work.

In many respects, Eagle Rock serves as an example of what can happen when public servants and contract agencies are asked to work with limited resources and without clear, explicit and consistently applied guidelines that express government's goals and expectations through legislation or regulations, administrative policy, contract agreements, and integrated cross-ministry structures.

Regulatory standards, giving effect to legislative provisions, must be accurately translated into administrative policy and applied in practice with individuals. A complex public service delivery system requires that a balance exist so that public servants, or those who contract to provide public services, are provided with criteria with which to exercise discretion and professional judgment in responding to unique situations. This discretion or professional judgment must also be structured so that consistency is achieved in responding to similar situations. When statutory guidelines are absent or not explicitly stated, confusion and inconsistency can arise when administrative decisions are made.

Eagle Rock's transition from Corrections Branch to MSSH contracting and funding is indicative of the functional similarities that exist in residential resources for children and youths notwithstanding the funding source or statutory mandate. The types of youths placed at Eagle Rock and the nature of programs provided did not change significantly when the source of contracting and funding changed. As previously indicated, a significant overlap in the population of special needs youths served by different ministries is evident. The basic special care needs of children and youths in residential settings are similar, but consistency is not apparent in the minimum standards of care that are expected of contractors by government ministries.

It may be unrealistic to expect government to enact a single piece of legislation that can adequately address the licensing requirements of a wide diversity of facilities — ranging from family day care to 300-bed adult long term care facilities. However, as government is now actively reviewing the Community Care Facility Act, the Family and Child Service Act and the Mental Health Act, it would appear timely to consider creative alternatives. One option is to develop separate licensing or certification legislation for each of child day care, adult residential care, residential child and youth care, and youth and adult day programs and facilities. These are distinct and specialized sectors within the service delivery system, and each is uniquely complex.

Recommendation #5

That the Ministry of Health, as part of the current review of the Community Care Facility Act, and in consultation with other relevant government departments and non-governmental agencies, review options for establishing separate and specialized licensing or certification for

a) adult residential care facilities,

b) child and youth residential care facilities,

c) child day care, and

d) youth and adult day programs.

Recommendation #6

That government, in consultation with appropriate caregiver contracting and educational organizations, act to establish, by legislative enactment, a comprehensive licensing or certification mechanism to be uniformly applied, monitored and enforced across all ministries which fund contracted residential child and youth care resources or facilities, including

a) family based resources for one or two children or youths,

b) family based group living resources for three or more children or youths,

c) staffed facilities, and

d) receiving and assessment resources or facilities,

and that resource and facility categories be defined and regulated.

Recommendation #7

That, as a pre-condition of licensing or certification, any person applying to operate a residential child or youth resource or facility be required to submit to the licensing or certification authority

a) evidence of appropriate experience and qualifications for the type of program proposed, and

b) a detailed program description that has received the written approval of the contracting authority.

(Note: In some resource categories, such as family based resources for one or two children or youths, it may be appropriate for the contracting agency to assist in the preparation of a generic program description for use by applicants.)

Recommendation #8

That the residential child or youth resource caregiver, facility operator, or contracting authority be required, as a condition of continued licensing or certification, to submit to the local licensing or certification authority a written program evaluation to be completed on at least an annual basis, demonstrating compliance with standards and contracting authority satisfaction with the level and quality of care being provided. A detailed annual financial and administrative report should be required for private companies, societies, and registered non-profit organizations or agencies.

Recommendation #9

That, in addition to minimum standards of health and safety, the licensing or certification authority regulate minimum standards of care appropriate for the different categories of residential child or youth resources or facilities with respect to

a) the qualifications of the operator, person in charge, staff and/or caregiver,

b) staff to child or youth ratios and/or levels of supervision expected, including provisions for 24 hour awake supervision in resources or facilities which

i) receive children or youths who have been assessed to be a potential danger to themselves or others, or

ii) operate as receiving or assessment resources or facilities,

c) documentation of individual care plans including provisions for ongoing case management, education, vocational training, and other special services, as well as procedures and schedules for regular reviews,

d) internal and external complaint resolution mechanisms available to residents, caregivers, and facility operators.

Standards in funding authority legislation

The mandate for setting standards in contracted residential child and youth care resources or facilities is also established, to varying degrees, in the legislation of individual contracting authorities. There are three major pieces of legislation that regulate the placement of children or youths away from their families into state operated or funded resources or facilities:

- the Correction Act,
- the Mental Health Act, and
- the Family and Child Service Act.

The Correction Act

Section 43 of the Correction Act states that

> Every youth containment centre or facility shall be inspected annually by the director, who shall make a written report to the Solicitor General recommending any changes that, in the opinion of the person making the report, should be made in the containment program or in a centre or facility inspected.

This provision does not apply to residential resources contracted by the Corrections Branch.

Section 44 of this Act requires that the Minister establish an Inspection and Standards Division which is responsible for monitoring and enforcing the established standards and for receiving and investigating complaints about the services being provided by the Corrections Branch. While Branch officials acknowledge that containment centres are more formally and frequently inspected than contracted facilities, the establishment, through legislation, of this

Division has resulted in the development of a commendable set of administrative standards governing all aspects of the Branch's services. Branch officials have, however, recognized the need to further develop and refine these standards, and the monitoring mechanisms within contracted youth resources.

The Mental Health Act

Under Section 8 of this Act the director of a mental health facility must ensure that each patient is provided with professional services, care and treatment appropriate to his or her condition and that standards are established and maintained appropriate to the function of the facility. Under Section 18, the director must not admit a person unless suitable accommodation is available for his or her care, treatment and maintenance and unless he or she can be appropriately cared for and treated in the facility.

Administrative policy standards for mental health and forensic youth services have been developed. A Children's Mental Health official has informed us that, as a condition of contract, residential child or youth care facilities are being required to comply with the licensing provisions of the Community Care Facility Act and Provincial Child Care Regulations.

The Family and Child Service Act

British Columbia's major child welfare legislation is virtually silent about the standards of service expected when children and youths are placed in the care of the MSSH. The Superintendent of Family and Child Service is responsible under this Act for the provision of residential resources, but is provided with no statutory or regulatory guidance about what constitutes an acceptable care environment.

The MSSH Inspections and Standards Unit, unlike its Corrections Branch counterpart, does not have a statutory mandate and does not traditionally receive and investigate complaints directly from clients or members of the public about ministry services. Recent initiatives within the MSSH are intended to develop comprehensive standards in administrative policy, but at present this important process is operating within a virtual statutory vacuum.

Standards established through contracts

The limited scope, uneven nature and inconsistent application of regulatory and administrative safeguards provided to children and youths placed in government-funded residential resources in this province are matters of great concern to this office. Inadequately defined contractual expectations of Eagle Rock did not assist or guide front-line staff who were expected to monitor the program on behalf of their respective authorities.

The Ministries of Education, Health, Labour and Consumer Services, SSH and the Solicitor General currently provide, fund or regulate residential programs for special needs children and youths. To varying degrees, these ministries have each established standards, in administrative policy and through contracts. However, minimum standards, and monitoring and enforcement procedures, are not consistently stated or evenly applied across government.

Increasingly, special needs children and youths, even the most disturbed, are being placed in family-based or parent-model homes at the community level. This poses significant challenges requiring advanced skills for alternate caregivers who are expected to deal with children and youths whose service needs often transcend ministry and professional boundaries and whose behaviours are challenging and often difficult to deal with. Contracting practices must reflect the move away from institutional notions of standard setting to approaches which more accurately reflect the changing, cross-ministry nature of community-based child and youth care services.

The foster home system has served the child welfare field well over the years but is now undergoing significant changes reflected in current de-institutionalization trends and moves by foster parents to professionalize in response to the more serious special needs of foster children. The traditional foster home has expanded to include bed subsidy homes, special care homes, parent-counsellor homes, private family group homes, staff model group homes, society sponsored group homes, society operated group homes, receiving and assessment centres, specialized child care facilities and wilderness programs. These programs are then supplemented by the variety of community based residential programs funded by Alcohol and Drug Programs, the Corrections Branch, Forensic Youth Services, and Child and Youth Mental Health.

A MSSH Levels of Care Committee, with the participation of the B.C. Federation of Foster Parent Associations, is currently reviewing the range of resources within that ministry with a view to consolidating and refining these descriptions of resource categories. This will assist the standard setting and contracting process within that ministry. Senior MSSH officials noted to this office that the operational service delivery arm has moved more quickly to create new and more responsive resources for children than has the administrative apparatus to rationalize the services funded by their ministry. Resource category definitions and distinctions must be based on sound planning within and across ministries which in turn requires accurate information about service need.

The MSSH has introduced a new Blueprint or Expenditure Plan Process for the annual submission of regional expenditure plans for child and youth services, both residential and non-residential. The format and instructions for submitting annual budgets utilize common definitions which are being further refined each budget year. These permit clearer comparisons to be made between regions against other demographic and environmental scan information provided by the regions. MSSH regions, in submitting annual expenditure plans, review the needs of children and youths in their communities and project the number and type of beds which will be required in the following year.

The blueprint process developed by the MSSH is viewed by the Deputy Ministers' Committee on Social Policy as a potential springboard for necessary cross-ministry planning in the child and youth services sector, where one ministry's action or inaction often has a direct impact on the resources of other ministries. The establishment of the Child and Youth Secretariat will provide a focal point for this planning.

Funding methods

Currently, special rates are paid to many MSSH foster homes based on a Point Rating Guide including the assessed difficulty of the child. Individual foster parents have often expressed concerns to this office about the process of negotiations with MSSH officials to provide special foster care to a child or youth. One criterion used is that the more serious the child's problems are, the higher the rate of pay to foster parents.

When foster parents believe that a child's special needs require a higher payment rate, the danger exists that the seriousness of the child's problems might be overstated. Working within limited resource budgets, MSSH officials must attempt to establish a reasonable rate for a child without understating the seriousness of the child's problems. The potential for arbitrary decisions in situations like this may violate both the principles of administrative fairness and the dignity of the young person.

MSSH officials have recognized the problems described above and one of the tasks of the ministry's Levels of Care Committee is to replace the Point Rating Guide with a new levels of care system.

Significant inter- and intra-ministry variance can exist in the level of funding provided to similar categories of contract programs serving a similar population of children or youths. It is unfair when one contract program, performing similar functions with a similar population of youths, is funded at significantly different levels than another, after allowing for normal regional cost disparities. This requires careful cross-ministry review and monitoring to ensure consistency based on established and fair common criteria.

Term of contracts

When an individual or agency enters into a contract to provide residential care to special needs children and youths, that contract is usually renegotiated on an annual basis. This is perceived to be inefficient and unnecessary by many contractors as it requires intensive senior staff time, which detracts from direct service, raises annual staff and program insecurities and inhibits the contractor's ability to develop longer range plans for the program.

When a ministry is well satisfied with the performance over a period of time with a particular contractor, it is appropriate for officials to consider a longer-term contract that will still require an annual performance review to ensure value for money. This is not uncommon within other government sectors which are able to negotiate longer terms with the proviso that the contract is conditional on an appropriation of funds by the Legislature.

According to government, this approach is beginning to be implemented in the child and youth services sector. A government Task Force on Contract Management recently recommended that general policy guidelines be developed on multi-year contracts. The Corrections Branch states that multi-year contracts may be entered into, if desirable from a program point of view, and if the price in years subsequent to the first have a modest or no inflation factor. Multi-year contracts are limited to circumstances where the service has been tendered or issued through a Request for Proposals. Such contracts are normally not to exceed three years.

The Child and Youth Program of Mental Health Services is developing a contract management and evaluation process which links the objectives of the service, cost analysis, staffing allocation, service utilization and workload capacity measures. An adaptation of this plan will be used to administer, monitor and evaluate the Sexual Abuse Interventions Project, described earlier in this report.

The existence of the Child and Youth Secretariat will ensure that a forum exists to establish greater cross-ministry consistency in contracting procedures. This is required in a field where community agencies serving children, youth and their families often contract with more than one ministry.

Recommendation #10

That government, through the Child and Youth Secretariat, in consultation with the proposed Contract Management Council, act to establish greater cross-ministry uniformity in contracting policies, procedures and practices, particularly in respect to

a) the standards of care and service expected for similar and defined categories of child and youth services that comply with appropriate licensing or certification requirements,

b) the provision of adequate and consistent funding levels to similar and defined categories of child and youth services,

c) funding methods based on the defined services being purchased rather than a subjective rating of an individual child's or youth's behaviourial or other difficulties,

d) the appropriate use of multi-year contracts in the child and youth services sector, and

e) documented regular evaluations to ensure program effectiveness and value for money.

Education and work preparation programs

Serious concerns frequently arose at Eagle Rock concerning youths' access to educational programs and the safety and fairness of work done by the youths on the owner's ranch.

Children and youths placed in government operated, funded and regulated residential programs require constructive day program activities. Government ministries frequently provide funding support for day activity programs for children and youths with special needs, including those who live with their parents. Children up to the age of 16 years are required, under the School Act, to participate in an approved educational program and, as a priority, should be routinely expected to do so.

Many special needs children or youths require special educational services to assess and respond to learning difficulties. For older youths, a work preparation program is often the preferred option. Workplace health and safety must then be assured.

Special education

The 1988 report of the Royal Commission on Education concluded that

> ...despite the positive nature of the present policies, programs and services initiated and operationalized by the Ministry of Education — as well as other provincial ministries, school boards, and local inter-ministerial groups — such initiatives are perceived by many individuals and groups as falling short of guaranteeing special needs children's basic legal rights to an education. (p. 212)

Rather than legislative change to protect the Charter rights of youngsters, the Commission favoured clarification of the school's responsibility for special needs learners in the School Act and urged

> ... the establishment of appropriate third-party arbitration in instances where parents and school authorities find themselves in dispute. (p. 213)

The Commission's final recommendations in this regard were as follows:

> 29. That present policies, programs, and services aimed at providing appropriate learning experiences for special needs learners of the province be continued.
>
> 30. That the appropriate ministries of the provincial government provide additional educational support services for both special needs learners and their teachers in normalized classroom settings.
>
> 31. That, where necessary, special needs learners and their families be provided with extended social and educational services designed to assist learners in overcoming the educational challenges they face.
>
> 32. That rights of special needs learners and their parents be clarified in the School Act, together with provisions by which any disputes between parents and school authorities would be referred to, and settled through, appropriate third-party action. (p. 213)

Eagle Rock and other investigations by this office indicate that appropriate special educational services are not always provided on a routine basis to school-age children and youths who live in provincially operated, funded and regulated resources and facilities.

Workplace health and safety

The original intent of the Corrections Branch in funding Eagle Rock was to establish a work preparation program for older youths. School aged youths, as young as 13 years old, were then frequently placed in the program. As earlier reported, one 13 year old youth recalled spending about one year at Eagle Rock before he was encouraged to attend the local school.

This report has also documented concerns that existed about the use of youths as cheap labour to develop the Eagle Rock ranch. In the course of their work activities, youths at Eagle Rock used dangerous equipment, and a number of concerns were expressed about the lack of consistent adult supervision, safety practices and the availability of adequate safety equipment. The original sawmill burned down and was rebuilt. The sawmill was inspected twice by WCB officials during approximately eight years of operation. It was not included as part of the licensing inspection program. A 13 year old "worker" subsequently lost his index finger in an accident while working on the sawmill. His caregivers wondered why he had received no compensation.

No application to the Workers' Compensation Board had been made by Eagle Rock or suggested by the funding authorities to provide youths with Workers' Compensation coverage. W.C.B. coverage is provided to students engaged in vocational or training programs in schools approved by the Ministries of Education and Labour and Consumer Services pursuant to Section 3(6) of the Workers' Compensation Act. Participants in rehabilitation and work preparation programs are eligible for Workers' Compensation coverage on the application of an employer or program or with the approval of the Lieutenant Governor in Council (Section 3(7)). Pursuant to an Order-in-Council (#350, February 1, 1979) Workers' Compensation coverage is also provided to probationers, divertees or other persons engaged on unpaid work programs designated by the Commissioner of Corrections.

The 13 year old who lost his index finger in the sawmill accident at Eagle Rock was described to this office by his caregivers as someone who has accepted this loss in a non-complaining manner even though the loss still causes him pain, especially in cold weather. We question whether this is an appropriate resolution of the matter and have indicated to government our intention to pursue this matter further.

Recommendation #11

That ministries which operate, fund or regulate residential resources or facilities for children and youths, in consultation with educational authorities, develop appropriate protocols to ensure that residents with special needs have access to appropriate educational and support services in accordance with the provisions of the School Act and in line with

recommendations #29 to 32 of the Report of the Royal Commission on Education.

Recommendation #12

That uniform, cross-government standards of health and safety be developed, perhaps as part of the licensing or certification function, that comply with the Workers' Compensation and Employment Standards Acts, and ensure work safety and fair compensation for work performed in government operated, funded and regulated youth vocational training and work preparation programs.

Results of consultation with ministries (regarding health, safety and care standards)

These recommendations are intended to suggest the need for more consistency in cross-ministry approaches to standard setting, monitoring and enforcement in child and youth services. Uniform and comprehensive cross-ministry approaches to standard setting, monitoring and enforcement can be achieved through contracting and some form of regulatory licensing or certification process. Options available to the ministries will be carefully considered as part of its current review of the Community Care Facility Act, Child Care Regulations and operational policies and procedures as well as reviews of other child-related legislation. The Ombudsman considers this to be a reasonable approach by government ministries given the complex and technical nature of this series of recommendations. The Child and Youth Secretariat, and the proposed Provincial Contract Management Council, will provide appropriate forums for cross-ministry consultation on uniformity in standards and contracting in this sector.

Special measures to safeguard the rights of children and youths

Caring adults, i.e. parents, alternate caregivers, service providers and child advocates, share a common interest in safeguarding the rights of children and youths. When publicly funded services are provided to families with special needs children, and particularly when a child or youth is placed in state care, special measures are required to protect and safeguard his or her rights. A common understanding of the defined rights of children and youths is necessary. When the most fundamental right of a child to freedom within his or her family is taken away, special procedural safeguards are necessary to ensure fairness.

Uniform principles expressed in law

While the legal rights of children and youths are not spelled out in a single piece of legislation in British Columbia, as they are, for example, in Quebec, these rights do exist in various federal and provincial laws, regulations, policies and procedures. The following list indicates how certain rights are conferred on children at different ages as a reflection of their developing capacities, and was originally summarized in the Ombudsman's 1988 Annual Report.

In matters pertaining to the Young Offender's Act (YOA):

1. Children have rights and freedoms including those stated in the Canadian Charter of Rights and Freedoms or in the Canadian Bill of Rights. (YOA3(1)(e))

2. Children have a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them. (YOA 3(1)e))

3. Children younger than 12 years of age have the right not to be treated as criminals. (YOA 2)

4. Children have the right to the least possible interference with freedom that is consistent with the protection of society, having regard to the needs of young persons and the interests of their families. (YOA 3(1)(f))

5. Young persons have the right to retain and instruct counsel without delay. (YOA 11(1))

6. Where a child who has committed an offence is committed to custody, an automatic review before a youth court shall occur at the end of one year. (YOA 28(1))

7. A young person has the right to be informed about his or her rights and freedoms. (YOA 3.1(g))

In matters pertaining to the Family and Child Service (F&CS) Act (R.S.B.C. c.119.1):

8. Children have the right to protection from abuse and neglect and in all matters the safety and well-being of the child shall be the paramount consideration. (Sec. 2)

9. Children in care have the right to have a "life plan" with scheduled reviews. (F&CS Policy 2.11.5)

10. Children have the right to be protected from corporal punishment when in state care. (F&CS Policy 2.12.5 and School Act Regs 14)

In matters pertaining to the School Act (R.S.B.C. 1979, c.375):

11. Children between the ages of seven and 15 years have the right to a free and appropriate public education. (School Act 113)

12. Children with handicaps have the right to receive instruction from special education programs. (School Act 97)

In matters pertaining to the Family Relations Act (FRA) (R.S.B.C. 1979):

13. Children have the right to reasonable and necessary support and maintenance by their parents, taking into consideration the cost of housing, food, clothing, education and recreation. (FRA 56(1))

14. In matters pertaining to custody and access, the best interests of the child shall be the paramount consideration. (FRA 24(1))

In matters pertaining to the Mental Health Act (MHA) (R.S.B.C., 1979, c.256):

15. A young person who has attained the age of 16 years and who has been admitted to a provincial mental health facility on his own request has the capacity to authorize his or her own treatment. (MHA 19(5))

In matters pertaining to the Marriage Act (R.S.B.C., 1979, c.251):

16. A young person who has attained the age of 16 years has the right to marry with the consent of his or her parents. (Sec. 24 & 25)

In matters pertaining to the Adoption Act (R.S.B.C. 1979, c.4):

17. A young person who has attained the age of 12 years must consent before he or she can be adopted. (S.8.(1.a))

In matters pertaining to the Name Act (R.S.B.C. 1979, c.295):

18. A young person who has attained the age of 12 years must consent to any change of name. (S.3.(9))

In matters pertaining to the Employment Standards Act (S.B.C., c.107.1):

19. Children under the age of 15 shall not be employed without the permission of the Director of Employment Standards. (S.50)

In matters pertaining to the Infants Act (R.S.B.C. 1979, c.196):

20. A young person who has attained the age of 16 years has the right to consent to medical/dental treatment if reasonable efforts have been made to get parental consent or a second physician certifies that treatment is in the child's best interests. (Sec.16)

In matters pertaining to the Motor Vehicle Act (R.S.B.C. 1979, c.288):

21. A young person who has attained the age of 16 years may obtain a driver's license through application of his parent or guardian. (Sec. 28)

In matters pertaining to the Community Care Facility Act (R.S.B.C. 1979, c.57):

22. Children being cared for in licensed child care facilities have the right to the appropriate provision of care including an opportunity for social, emotional, physical and intellectual growth in a safe and healthy environment. (Regs. Sec. 10 and 16)

In matters pertaining to the Guaranteed Available Income for Need (GAIN) Act (R.S.B.C. 1979, c.158):

23. A young person who is not residing with his or her parents may, in the discretion of the administering authority, make application for income assistance and, if refused assistance, has the right of appeal. (Regs. 3(4))

In matters pertaining to the Criminal Injury Compensation Act (R.S.B.C. 1979, c.4):

24. A child victim of abuse has the right to apply for compensation in support of rehabilitation and treatment in order to lessen or remove a handicap resulting from the injury. (s.2(1), 16, 17(1))

In matters pertaining to the Ombudsman Act (R.S.B.C. 1979, c.306):

25. Children have the right to complain on their own initiative or through other interested parties where they believe that they have been unfairly treated by a provincial authority.

26. Children confined to an institution or facility have the right to confidentiality in their communications with the Ombudsman. (S.12(3))

27. Children have the right to be treated fairly and in accordance with the principles of administrative fairness. Specifically, children have the right to complain to the Ombudsman about decisions, recommendations, acts or omissions by authorities which may be

- contrary to law
- unjust
- oppressive or improperly discriminatory
- based on a mistake of law or of fact
- based on irrelevant grounds or consideration
- based on arbitrary, unreasonable or unfair procedure
- negligent, improper or otherwise wrong

or where there has been a failure to give adequate and appropriate reasons. (Sec.22)

If the Ombudsman finds the complaint to be substantiated, he can make recommendations to remedy the situation. (S.22)

The Ombudsman's 1988 Annual Report also discussed initiatives at the United Nations to establish a Convention on the Rights of the Child. On November 20, 1989, the United Nations General Assembly, with Canada playing a lead role, ratified this Convention. On Sunday, September 30, 1990, the Canadian Prime Minister co-chaired a United Nations summit meeting attended by approximately 70 heads of state and other world leaders.

The world summit focused international attention on the plight of children, called for a one-third reduction in deaths of children under five by the year 2000 and set other specific goals. The UN Convention on the Rights of the Child was also the focus of attention at this summit and was reported to have been ratified by 49 states to date.

Prime Minister Mulroney stated that "children may finally have found the voices and the friends they have long been seeking" and promised that the federal government will soon announce a wide ranging plan for Canadian children. The federal Minister of Health and Welfare was subsequently named as the minister responsible for children's issues and said Ottawa will soon "integrate programs relating to children". Pursuant to recommendations made by Rix Rogers, a children's bureau will be established within the federal government to coordinate federal policies on children and ensure "the need to respect children's special needs at all times". (Canadian Press report in the Times Colonist, October 2, 1990, p. 1).

Canada is expected to ratify the Convention some time in 1991. British Columbia appears well prepared for the entrenchment of children's rights in international law and, among Canadian provinces, is at the forefront of current efforts intended to ensure this country's ratification. At a 1988 UNICEF symposium in New York, Stephen Lewis, former Canadian Ambassador to the United Nations, described the Convention as

> ...a way of teaching children about children...it is an extraordinary teaching tool... an instrument which can mobilize the education system, and turn educators into advocates. (Address at symposium at Unicef House, New York, October 7, 1988).

The Badgley and Rogers reports, and widespread allegations of historical child abuse within residential facilities, have sensitized Canadians to the vulnerability of children and their fundamental need for protection. The Saskatchewan Ombudsman has recommended to government the establishment of a Children's Bill of Rights, following that office's investigation of allegations of child abuse at Bosco Children's Homes. Canadians also await the report of a Royal Commission of Inquiry into alleged incidents of child abuse at Mount Cashel in Newfoundland.

Under the Canadian constitution, the provincial governments carry major responsibility for the provision of health, education and social services to children, youths and their families. Increasingly in British Columbia, government services to special needs children, youths and their families have been delivered through contracts with private agencies. This office has stated its belief that an explicit and common understanding between government and private contractors about the rights of children and youths can serve as a useful foundation for the development of standards of services which may then be translated into contractual agreements which are fair, responsive and accountable.

Frequently, many ministries are providing or funding services to one special needs child and his or her family. The resultant dangers of confused and overlapping mandates are well known to consumers and professionals in this field. The need for uniform provincial approaches in this complex public service sector is a major theme of the recommendations in this report.

One of the strongest tools available to a democratic society in defining common principles and protecting citizens is statutory law. An explicit legislative statement of principles governing the delivery of provincial government services to special needs children, youths, and their families, would signal government's intent to provide these vulnerable young citizens, and their parents, with the strong commitment that they will receive appropriate care, treatment and protection. A common statement of principles expressed in law could also serve as a sound legislative foundation for a unified and integrated approach to services for special needs children, youths and their families.

Recommendation #13

That existing legislation, regulations and policy establishing the rights of special needs children, youths and their families be consolidated and expanded into a Provincial Statement of Principles for children, youths and their families that is consistent with the provisions of the Canadian Charter of Rights and Freedoms and the United Nations Convention on the Rights of the Child.

Results of consultation with ministries

Having participated in an extensive review of the United Nations Convention on the Rights of the Child, government ministries which provide child, youth and family services recognize that the challenge ahead is to ensure that children's rights, as outlined in the Convention, are effectively translated into guiding principles that provide standards against which child, youth and family services may be assessed.

The Ombudsman's office recognizes that some ministries have developed principles concerning child, youth and family services within their administrative policies. This recommendation suggests to government the need for a Provincial Statement of Principles which would act as a standard setter for *all* ministries providing, funding and regulating child, youth and family services.

The Deputy Ministers' Committee on Social Policy has outlined to the Ombudsman's office a number of basic principles which guide ministries in planning and managing policies:

- The family is the primary source of support for children;
- Children are our most valuable investment for the future;
- Failure to protect and nurture our children and resolve problems as they arise may result in problem escalation, problem multiplication, long term systems dependency and subsequent generational difficulties;
- Government's role is to support individuals, families and communities, with minimum intrusion, in fulfilling their responsibilities to children;
- Government intervenes only when these primary support systems do not ensure the health, safety and well-being of a child or children, or where required by law;
- Appropriate education and early intervention often minimize the need for more intensive intervention at later stages of development;
- Interventions should reflect the unique needs and the legal rights of children and families;
- Services should be client-centred and coordinated in order to avoid having clients "fall between" jurisdictions, and thus remain unassisted.

These principles will be reviewed and refined by the Child and Youth Secretariat and consideration will be given to their utility and application across relevant government ministries.

Persons working in positions of trust with children and youths

The most fundamental safeguard for children is the assurance that they will be treated with the care, respect and dignity that they deserve by adults in authority. In recent years, Canadians have become more aware of the extent to which children are abused and neglected by adults in authority. Special measures are particularly important when the child is cared for in government funded and regulated programs.

On two separate occasions at Eagle Rock, staff were fired following MSSH investigations of alleged physical abuse. No mechanism currently exists to determine fairly if these staff persons are currently engaged in work with children and youths and, if so, pose any continuing risk. The incidence of institutional child abuse when special needs children and youths are placed in government care has been well documented and has received widespread public attention across Canada in recent months.

In a recent Globe and Mail article (March 24, 1990), the director of a Toronto-based Institute for the Prevention of Child Abuse was quoted at a national symposium as saying that

> "... While no reliable statistics exist on abuse of children in the child welfare system, it happens throughout the system — in group homes, foster care, treatment centres and other institutions.

Other speakers at this national symposium on residential care in the child welfare system agreed, and one alleged that "Child-care workers suspected of abusing children are often paid off with 'a golden handshake' and move on to other agencies where they may abuse again...".

An example of the inadequacy of current screening and tracking mechanisms within the child care field was provided by a B.C. participant at this symposium. His agency received a letter from "a major B.C. agency" recommending a former employee, who was later charged with abusing a disturbed 14 year old girl. Only later did his agency learn about allegations against the employee at his previous job. As is often the case, the man was not convicted "because emotionally disturbed 14 year olds do not make good witnesses".

In September 1986 "An Enquiry into the Sexual Abuse of Children by School Board Employees in the Province of British Columbia" (Barry Sullivan and Georgia Williams) stressed the need for ongoing coordination, evaluation and accountability and noted that no vehicle existed to perform these tasks. (p. 5) The report also noted that

> "the sexual abuse of children by those in trust positions has attracted a great deal of public attention and comment. It is our opinion that this problem is underestimated both in terms of its occurrence and its effect on the children involved." (p. 6)

The vast majority of caregivers, volunteers and professionals who work with children are caring and dedicated individuals. Their job is a taxing and emotionally demanding one. Caution is required in not tarring with the same brush the dedication of the great majority of child and youth care professionals because of the abusive actions of a few. Nonetheless, as pointed out in the Sullivan/Williams Report

> ... while the number of offenders has been small, the damage has been great... Pedophiles and child molesters gravitate to employment situations where the work involves the care, treatment, transportation, supervision or entertainment of children. (p. 6)

The lack of inter-agency coordination in efforts to combat sexual abuse was also identified:

> A primary cause of failure of past attempts to deal with the problems of sexual abuse has been the lack of a totally coordinated approach combined with established accountability and a procedure to assess and, if necessary modify the approach taken... We have been struck by how totally dedicated and committed [professionals] are, but also how ignorant they are to how they interact with others and the services which are provided by others. (p. 7)

Three mechanisms available to authorities to identify and screen persons who work, or apply to work in positions of trust with children were identified in this report:

1. Criminal Record Check,
2. Reference and Employment Checks, and
3. A Central Child Abuse Registry.

In 1987, the Ombudsman's Office issued Public Report No. 5 "The Use of Criminal Record Checks to Screen Individuals Working with Vulnerable People". This report examined the expanding government policy of using criminal records as an employment screen for individuals working in positions of trust with children, youths and other vulnerable people.

The report provided recommendations regarding the use of criminal record checks in the development of a comprehensive, fair and effective screening process.

Criminal record checks alone will not be an effective method of protecting vulnerable people but can be regarded as one of a number of tools that can be utilized in establishing services where children and youths will not be at risk. The widest interests of society are best served when the public can place real confidence in a fair and effective screening process that does not deter competent people from providing services to those who are vulnerable.

Tracking and screening child abusers

The 1988 Ombudsman Annual Report revisited the controversial issues surrounding the operation by MSSH of a Central Child Abuse Registry. In 1984, the ministry replaced this Registry with a Central Index. At that time, we noted our concerns to the ministry that the Index would not include the names of alleged child abusers. We noted that many children are abused by persons other than a parent including some who are employed or volunteer in positions of trust with children.

The Sullivan/Williams Report recommended that

> ...a central source of pooled information for the province rather than the existing inefficient and inaccurate classification system be contemplated as a better alternative to the existing system. (p. 14)

This Report cautioned that the legal aspects related to the entry of names, notification, expungement and exchange of information should be reviewed and "clearly dealt with" before any Child Abuse Registry is contemplated. This is in line with previous recommendations made to MSSH by this office.

A Child Abuse Register is authorized under Section 71 of Ontario's Child and Family Services Act. The utility of that province's Child Abuse Registry as a screening and tracking device for persons engaged in positions of trust working with children was the subject of a 1987 review by N. Bala et. al. for the Ontario Ministry of Community and Social Services. This report observed that

> ...the laws which have governed criminal prosecutions often make it very difficult to obtain convictions in child abuse cases. Often a young child is not considered competent to testify in a criminal case, and concerns about the trauma of the court process on the child have often made the authorities reluctant to prosecute. As a result, the absence of a conviction or prosecution does not necessarily mean that abuse has not in fact occurred, but only that the high standard of proof for a criminal case was not met or that criminal prosecution was not considered appropriate. (p. 4)

The Bala report suggested the creation of a new Ontario Child Abuse Registry based on two separate sub-registers: the register of child abusers, and the child abuse research register. Each would have a distinct function and manner of operation.

The "abuser register" was recommended to screen employees, volunteers, foster parents and others who may occupy a position of responsibility for children. Consent of individuals would be required before a search could take place but if refused, they may not be considered for the position. The "child abuse research register" would contain only non-identifying information that would be useful for research purposes.

In 1987, Manitoba introduced amendments to the Child and Family Services Act intended to provide additional safeguards for individuals identified by the system as suspected child abusers. Separate "abuser" and "victim" registries were established. Inter-disciplinary Agency Child Abuse Committees were developed to review cases of suspected child abuse and to make recommendations about the placement of the names of suspected child abusers on the abuser registry.

Manitoba's Child and Family Services Act requires that the name of a *child victim*, and the circumstances surrounding the abuse, be reported to the director for entry on the registry where

a) a person has been convicted by a court of abusing a child,

b) there is a finding by a court that the child is in need of protection on the basis of abuse, or

c) the agency has received an opinion of a duly qualified medical practitioner or psychologist consistent with the child being a victim of abuse and in the opinion of the agency child abuse committee, the child has been a victim of abuse. (Section 19(3))

The name of a *person who has abused a child* and the circumstances surrounding the abuse shall be reported to the director for entry on the registry when

a) a person is convicted by a Court of abusing a child,

b) the person has been found by a Court in a proceeding to have abused a child, or

c) the agency child abuse committee is of the opinion that the person has abused a child. (Section 19(4))

Upon receipt of a report from the Agency Child Abuse Committee the director must review the report and, where satisfied that the report complies with the requirements of the Act, the director is required to give notice of the report to

a) any adult who is alleged to have abused the child,

b) the parent or guardian of a child who is alleged to have been abused,

c) the parent or guardian of a child who is alleged to have abused the child,

d) the child who is alleged to have been abused where the child is 12 years of age or older, and

e) the child who is alleged to have abused a child where the child is 12 years of age or older. (Section 19.1(3))

In the notice required to be given by the director he or she must:

a) set out the names of the persons the agency has reported to the director for entry on the registry,

b) set out the circumstances surrounding the abuse as reported by the agency,

c) advise that the names and the circumstances will be entered on the registry unless the person notifies the director in writing within 60 days that he or she objects to the placement of the names on the registry, and

d) inform the person of the right to object to the entry of the name on the registry by appealing to the registry review committee. (Section 19.1(4))

Where no objection is made within 60 days, the director must enter the names and circumstances on the registry. Where an objection is received, the director refers the objection to the Minister. Pursuant to Section 19.2 of the Act, the Lieutenant Governor-in-Council is required to appoint a seven person registry review committee to serve a term not exceeding five years. When an objection is referred to the Minister, the Minister appoints a panel of three members of the registry review committee to hear the objection.

The panel is required to hear the objection no later than 30 days after its appointment and must, at least 10 days in advance of the hearing, notify by registered mail the objecting persons and any other persons the panel deems necessary. The panel has the powers, rights and privileges of commissioners pursuant to Part V of the Manitoba Evidence Act. At a hearing the burden of proof is on the agency to show, on *the balance of probabilities*, that the name(s) should be entered on the registry. All parties may be represented by legal counsel or an agent and shall have the opportunity to present evidence and to examine and cross-examine witnesses.

Within 30 days of the completion of the hearing the panel must provide all parties with written reasons for its decision. A party to the hearing may, within 60 days of the panel's decision, appeal that decision to the Court of Queen's Bench on a question of law or jurisdiction. A party to the hearing may apply to the director to have the matter heard again on the basis of evidence which was unavailable at the time of the hearing. The director must then notify the Minister who appoints a panel, none of the members of which were on the panel that made the original decision to rehear the matter.

On application by a person who has obtained a pardon with respect to the conviction which led to placing that person's name on the registry, the director must remove all identifying information relating to that person from the registry.

The rules of confidentiality and access to information are addressed in Sections 19.3 and 76 of the Act. All names and information on the child abuse registry are confidential and the director must allow access to this information only in accordance with section 76. Access to information from the registry must be given to an agency on application to the director, when the director is satisfied that the access is reasonably required to assist the agency

a) in investigating whether a child is in need of protection,

b) in assessing foster parents, homemakers, adoptive parents, parent aides or persons applying for such roles with that agency, or

c) in assessing an applicant for employment with that agency. (Section 19.3(2))

The director may also, on application by a school division, day care centre or other employer whose employees will be responsible for the care of children, advise the applicant whether the name of a person has been entered on the registry where the director is satisfied this information is reasonably required by the applicant to assess an applicant for employment or to assist in care of a child.

The director is required to provide to any person who applies, any information contained on the registry respecting that person, other than information that may identify a person who made a report of a child being in need of protection. When a child attains the age of 18 years, the director must delete from the registry all identifying information relating to a child who is listed as an abused child. All identifying information relating to a person who is listed as an abuser must be removed from the registry after 10 years have elapsed since the last entry relating to a person or when the child who was abused attains 18 years of age, whichever is the later day.

It is worthy of note that, as of October 1, 1990 the Manitoba Office of the Ombudsman has not received a single complaint from persons whose names have been entered on the child abuse registry in that province. The registry provisions in the Manitoba Act that are described above have now been in force for two years.

On June 28, 1988, royal assent was given to an amendment to Section 22 of British Columbia's Family and Child Service Act (S.B.C. 1980 c.II). This amendment provides the Superintendent of Family and Child Service with greater discretion in disclosing information that is necessary for the safety and well-being of a child, and may be helpful in any considerations by government of the reinstatement of some form of child abuser registry.

B.C.'s Sullivan/Williams Report (p. 39) cited a Divisional Court decision as offering a "bottom line test" in dealing with Ontario's central registry:

> It is recognized that the register is an important monitoring device and provides invaluable assistance to those responsible for dealing with the difficult and highly emotional problems relating to child abuse. To permit the registry to achieve its purposes, entries should not be limited to cases in which abuse has been established by the standard of proof applicable to criminal or civil actions. In my view, the public interest will be served if the burden of proof in s. 52(14) Child Welfare Act hearings is satisfied by credible evidence supporting the information in the register... In the absence of credible evidence, the name must be expunged.

The Ombudsman's office believes that a fairly administered child abuser registry could be developed by the provincial government to contribute to the combination of efforts required to combat child abuse.

Mechanisms designed to combat child abuse are evolving as the knowledge base in this field expands. While there is little evidence that Child Abuse Registries have to date been effective in tracking known or suspected child abusers, the extent to which problems of design and administration have contributed to this perceived ineffectiveness is not fully understood. In fact, most jurisdictions in North America operate some form of child abuse registry. Our review of the literature and consultations with professionals in the child, youth and family service field suggest an evolving consensus about the limited use of registries for screening individuals who wish to work or volunteer in positions of responsibility for children, and compiling non-identifying information for use in research efforts aimed at combatting child abuse.

Although difficult to prove, it is reasonable to assume that the existence of a registry of child abusers could also act as a deterrent that discourages abusers from applying to work or volunteer in positions of trust with children.

A human plea for government action in this area has been provided by the National Youth in Care Network, an organization comprising children who are or have been in state care. In a position paper submitted to Rix Rogers, the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse, they wrote:

> We are very concerned with the rate of abuse in foster care and institutional child welfare care. Present screening and complaints procedures are inadequate. Of the twenty-one previously sexually abused young people attending the Calgary meeting, eleven had been sexually abused while in care. For one, her first sexually abusive experience occurred after she had gone into care! Perpetrators ranged from foster parents and child care workers to foster siblings and others. We would strongly support means to allow child serving agencies access to the criminal records of applicants (for positions working with children) ... It is important that all provinces and territories have in place proactive, flexible and "user friendly" child/youth in care complaints procedures. We are saddened by the public backlash against screening mechanisms such as the Child Abuse Registry in Ontario. The majority of sexual abuse cases do not make it to court because of either a lack of evidence or the victim's unwillingness to lay charges. The sexual abuse still happened, however, and there is someone who was sexually abused and someone who is a sexual abuser. What about the other children... The individual rights of perpetrators to privacy infringes upon children's collective rights to protection. Society must take a side.

Recommendation #14

That the provincial government undertake to review current methods of pooling information for the purpose of protecting children from abuse with a view to improving systems which are intended:

a) As screening mechanisms for persons applying to work or volunteer in positions of trust with children;

b) For the collection of non-identifying information for use in research efforts aimed at combatting child abuse;

c) To effectively track persons who have been found, through a fair administrative, civil or criminal process, to have abused a child or children.

Results of consultation with ministries

A continuing open dialogue about the most effective means through which children can be protected from abuse is necessary and useful. The Deputy Ministers' Committee on Social Policy has stated that the practice of criminal record checks, as well as reference and employment checks, for all government personnel who work in positions of trust with children has been in effect in B.C. since 1985.

The Ministry of Health's Community Care Facilities Branch is currently developing a procedure for a new criminal record check requirement within the Child Care Regulations and is developing a serious incident reporting mechanism which will cover reports of abuse in licensed facilities.

Current initiatives in Manitoba to provide additional safeguards for children through a statute based central registry system are being actively monitored by provincial governments in B.C. and elsewhere. It is too early to evaluate the effectiveness of the Manitoba system and this, as well as other Registry systems, will be closely monitored by the B.C. government. Issues related to Child Abuser Registries will be revisited by government ministries and the Ombudsman office within two years.

Procedural safeguards for youths in secure treatment

The final, and most intrusive, stage in the continuum of services for many troubled and troublesome youths is the locked facility. The lifestyles of some youths, notably those attached to the streets, are viewed as dangerous by many parents and service providers. The behaviour of many emotionally disturbed or conduct disordered youths may be readily understood in the context of their previous life experiences but it is often not easy to live with. Eagle Rock is an example of how "hard to serve" youths can contribute to staff and resource exhaustion. Periodically, youths are assessed to need a period of time in a secure custodial setting based on immediate concerns for their own or others' safety.

For youths who are sentenced by the Courts to a period of secure custody under the Young Offenders Act, or who are considered certifiable under the Mental Health Act, legal due process and review procedures are defined in legislation. But youths are, at times, placed by parents or guardians in secure or locked treatment facilities not because they have committed a criminal offense, or because they are certifiable but because their behaviour is causing serious concerns in the community and treatment is deemed necessary.

Currently, the child welfare and mental health systems respond informally when placing these youths in a secure treatment setting. They are admitted to a locked treatment facility, such as that at the Maples Adolescent Treatment Centre, as voluntary patients pursuant to Section 19 of the Mental Health Act which states that

> The director of a Provincial mental health facility may admit any person to and detain him in the Provincial mental health facility where
>
> a) the person requests admission, if he has attained the age of 16 years; or
>
> b) on the request of a parent or guardian or, if a parent or appointed guardian is not available, of his nearest relative, if he is under the age of 16 years, and the director is satisfied that the person has been examined by a physician who is of the opinion that the person is a mentally disordered person."

A mentally disordered or mentally ill person is defined in Section 1 of the Mental Health Act as

> . . . a person who is suffering from a *disorder of the mind* a) that seriously impairs his ability to react appropriately to his environment or to associate with others; and b) that requires medical treatment or makes care, supervision and control of the person necessary for his protection or welfare or for the protection of others. . . . (our emphasis).

"Conduct disordered" youths may be assessed to have a "disorder of the mind" and may require "care, supervision and control", but they are usually not assessed by psychiatrists as certifiable. Unlike "thought-disordered" youths, the problems of "conduct disordered" youths are, as the label implies, behavioural. The roots of these problems often appear to lie in the environment. The American Psychiatric Association's Diagnostic and Statistical Manual (DSM-III-R), defines a conduct disorder, for clinical and research purposes, as a disturbance of conduct lasting at least six months, during which at least three of the following have been present:

(1) has stolen without confrontation of a victim on more than one occasion (including forgery),

(2) has run away from home overnight at least twice while living in parental or parental surrogate home (or once without returning),

(3) often lies (other than to avoid physical or sexual abuse),

(4) has deliberately engaged in fire-setting,

(5) is often truant from school (for older person, absent from work),

(6) has broken into someone else's house, building or car,

(7) has deliberately destroyed others' property (other than by firesetting),

(8) has been physically cruel to animals,

(9) has forced someone into sexual activity with him or her,

(10) has used a weapon in more than one fight,

(11) often initiates physical fights,

(12) has stolen with confrontation of a victim (e.g. mugging, purse-snatching, extortion, armed robbery),

(13) has been physically cruel to people.

Note: The above items are listed in descending order of discriminating power based on data from a national field trial of the DSM-III-R criteria for Disruptive Behaviour Disorders. (Desk Reference, Diagnostic Criteria, DSM-III-R, June 1987)

Where a youth (or an adult) is deemed by two physicians to be certifiable he or she may be admitted, involuntarily, to a mental health facility but, pursuant to Section 27 of the Mental Health Act, he, she or a person acting on his or her behalf may apply to a court for a review of that decision. Additionally, a person admitted to a mental health facility as an involuntary patient pursuant to section 20 of the Mental Health Act is entitled to apply for a hearing by a review panel.

Applications for a review panel may be made at any time during any particular initial detention period or renewal thereof. The panel must be convened to hear the case within 14 days after his or her application has been received, in the case of initial detention or first renewal. With respect to patients who are under three-month or six-month renewals, the hearing must be convened within 28 days after the application has been received by the review panel chairperson. The time periods may be abridged on six-month renewal certificates by the review panel chairperson.

This office is aware of a number of youths, including at least one who was subsequently placed at Eagle Rock, who had been placed in locked mental health facilities as "voluntary" patients without due process protections to review that decision. Our concerns about the lack of due process and access to independent review for youth placed in secure facilities through "informal" means was communicated to the Ministry of Health in an initial draft of this report. We were subsequently informed of pending changes to the Mental Health Act (which came into force on October 15, 1990). These changes provide informal patients under the age of 16 years with the same right to access review panels and the Courts that are available to involuntary patients. This is a positive step in ensuring procedural safeguards for youths placed in secure treatment.

Some professionals have argued that, to be effective, treatment must be voluntary, and if society wishes to incarcerate children or youths, it should not be done under the guise of treatment. Decisions to lock up youths, whether or not it is considered to be in their best interests, must be undertaken with extreme caution and with due regard to the need for procedural safeguards.

In British Columbia, the only legal means available to parents and guardians when they believe that a non-consenting young person under 16 years of age requires placement in a locked treatment setting is the Mental Health Act which is intended primarily for use with adults and certainly cannot be considered as child-centred legislation. Our research into how other jurisdictions deal with this dilemma discovered interesting legislative options from Alberta and Ontario.

Ontario's Child and Family Service Act

In Ontario, the Child and Family Service Act authorizes the Court to commit a child over 12, or less than 12 with the consent of the Minister, to a secure treatment program, when it is satisfied that

a) the child has a mental disorder as defined in the Child and Family Service Act,

b) the child, during a specified period, caused or attempted to cause serious bodily harm to himself, herself or another person,

c) the child has made a substantial threat to cause serious bodily harm, or caused or attempted to cause a person's death,

d) the secure treatment program would be effective in preventing harm to self or others,

e) treatment is available at the facility, and

f) no less restrictive method of providing treatment is appropriate. (Section 118.2)

A mental disorder is defined in Section 108 as "...a substantial disorder of emotional processes, thought or cognition which grossly impairs a person's capacity to make reasoned judgments."

A time limit of 180 days is placed on the committal (Section 114 (1)) and the child must be released after 60 days unless the child's parent consents to his or her commitment for 180 days or the child is made a ward.

A Court review is provided for (Section 117a (1)) and a termination order may be applied for by the child, (if he or she is over 12), the parent or the children's aid society having care, custody or supervision of the child. The Court may order an independent assessment of the child's need for secure treatment.

In terminating an order for secure treatment, the Court must consider whether there is an appropriate plan for the child's care on release from the secure treatment program.

Alberta's Child Welfare Act

The Child Welfare Act of Alberta includes due process provisions when youths are placed in secure treatment facilities.

This legislation provides the Director of Child Welfare with the authority to issue a secure treatment certificate for temporary or permanent wards if he or she has reasonable and probable grounds to believe that

a) the child has a mental or behaviourial disorder,

b) the child presents a danger to himself or others, and

c) it is necessary to confine the child in order to remedy or alleviate the disorder. (Section 41(1))

A secure treatment *certificate must* include a statement showing

a) the reason for the confinement,

b) the duration of the certificate,

c) the date, place and time at which the appearance to show cause... will be held,

d) that the child may be represented by a lawyer at any appearance before the Court, and

e) the address and telephone number of the nearest office of the Legal Aid Society. (Section 41(2)).

The legislation also provides for an automatic Court review within five days when a secure treatment certificate is issued, at which time the onus is on the Director of Child Welfare to show cause why the certificate was issued. The Court may then make a secure treatment order for a period of not more than 30 days (Section 42(3)).

Pursuant to Section 47 of Alberta's Child Welfare Act, the child or his or her guardian may apply to the Court for a review of the secure treatment order once during the period of the order, and once during the period of a renewal of the order (Section 47(2)(b)). The director may apply to the Court for a review at any time during the period of the order or renewal order (Section 47(2)(a)). Pursuant to section 28, after hearing an application for the review of a secure treatment order, the Court may make an order confirming, varying or terminating the secure treatment order.

The decision to incorporate provisions for secure treatment in Alberta's child welfare legislation rather than in mental health legislation appears to have been based, at least in part, on cost-sharing arrangements between the federal and provincial governments. However, it appears that secure treatment may often be used as a protective measure or for social control purposes rather than as a planned treatment intervention.

Concerns about the use of secure treatment

As suggested in the previous section, an appropriate continuum of services must be ensured to minimize the risk of locking up youths because of the lack of more appropriate services in the community. The principles of administrative fairness require that strong procedural safeguards be established in legislation to ensure that such intrusive measures are used with great caution and be subject to Court and administrative review. Experiences with the use of secure treatment in this, and other provinces, have led to many questions being raised about the effectiveness of current approaches, including:

a) Disparate understandings about the purpose of secure treatment, for social control, civil commitment or treatment;

b) The lack of clarity about multi-disciplinary responsibilities for assessment and treatment;

c) Unclear criteria for confinement, especially with regard to the meaning of the term "conduct disorder";

d) Unrealistic expectations about the required length of treatment and its effectiveness;

e) Dangers of significant variations in average committal periods in different areas;

f) The use of Courts which can create the appearance of criminality;

g) The potential inflexibility of secure treatment provisions which do not necessarily facilitate the use of partial release and transitional planning;

h) The tendency to place greater emphasis on security than treatment and different interpretations about the many meanings of treatment;

i) The need for an effective service continuum to ease the transition of youth back to the community;

j) The need for greater cooperation between child welfare, mental health and other child--focused service providers;

k) Eligibility requirements which can make it necessary for parents to relinquish guardianship in order to access secure treatment for their child;

l) Shortcomings in the legal protection afforded to youth (who may not have independent legal representation and can be represented by duty counsel who may see a client only minutes before a Court appearance. The Court may also lack the power to adjourn and be forced to make a decision with incomplete or unsatisfactory evidence).

Issues of secure care and treatment are complex and no jurisdiction appears to have found the perfect balance between community and parent demands to lock certain youths up "for their own good", and appropriate fairness safeguards for individuals whose freedoms are restricted for reasons other than a criminal act or "insanity".

Recommendation #15

That the Ministry of the Attorney General, in collaboration with the Child and Youth Secretariat, review current practices and provincial legislation regulating the use of secure special care and treatment facilities for youths who are

a) assessed to be a serious and immediate danger to themselves or others,

b) clinically assessed to be in need of, but may be resistant to, treatment,

c) not considered certifiable pursuant to the Mental Health Act, and

d) not sentenced by the Court to a period of time in secure custody,

with a view to recommending provincial approaches that are consistent with the provisions of the Canadian Charter of Rights and Freedoms, the United Nations Convention on the Rights of the Child, and principles of administrative fairness.

Results of consultation with ministries

Changes in mental health legislation and practice across Canada over the past two decades have narrowed the circumstances in which people are detained. Previously, young people and the mentally disabled were often detained for what was described as their own good and for the purposes of treatment. One of the most important changes when the Young Offenders Act replaced the Juvenile Delinquents Act was the removal of the capacity to use legislation to detain youths for non-criminal behaviour.

The issue of secure treatment services for children and youth has significant human rights and legal implications and also inspires considerable debate about the effectiveness of involuntary detention for treatment. The ministries have and will continue to address this complex issue in a manner which is sensitive to both the needs and rights of children and youths. In this regard, through the cooperation of the Ministry of Solicitor General and the Ministry of Labour and Consumer Services, there have been significant enhancements to substance abuse assessment and counselling services for young offenders in youth containment centres in the past two years. In the near future, these measures will be complemented further by substance abuse treatment initiatives presently being coordinated by the Ministries of SSH, Labour and Consumer Services and Solicitor General.

As previously indicated, two important amendments to the Mental Health Act came into force on October 15, 1990. The first amendment concerns the rights of children under the age of 16 years admitted informally to a mental health facility pursuant to Section 19(1)(b) of the Mental Health Act.

Informal patients under 16 years of age are admitted on the signature of a parent or guardian and hence cannot leave on their own request as can an adult. Prior to this amendment, these patients had fewer rights than an involuntarily certified child who had the right to appeal to the Review Panel and received periodic compulsory re-examinations. The new amendments now require that informal patients under the age of 16 years be examined with the same frequency as if they were involuntary patients and also have access to the Review Panel and the courts.

The second amendment concerns Section 28(1) of the Mental Health Act and subsequent Regulation change (7(2)). The amendment requires facilities to notify the child, and the next of kin, of the child's rights to appeal to the Review Panel.

The fair administration of these amendments will be closely monitored by the Ombudsman's Office as part of its regular visits to provincial mental health facilities. The ministries have also made a commitment to address and coordinate future cross-ministerial policy development and program initiatives respecting secure treatment services through the Child and Youth Secretariat. In addition, within a mental health context, the Ministry of Health is presently undertaking a comprehensive review of the Mental Health Act.

Administrative review and advocacy

Differing perspectives about Eagle Rock were evident throughout the history of the program. The frequency and seriousness of complaints concerning the safety and treatment of youths in that program is such that they cannot be lightly dismissed as isolated incidents.

A number of youths said that they did not want to be at Eagle Rock, including those subsequently convicted in the death of a fellow resident. Local community residents, probation officers, mental health officials, a Judge, MSSH officials and former child and youth care staff all expressed serious concerns about the quality of care being provided to youths. These concerns do not appear to have been fairly or adequately heard and were certainly not lastingly resolved. No formal complaint resolution mechanism was required by funding or licensing authorities.

Many youths placed at Eagle Rock were removed from easy access to their parents, their social workers and others who were close to them. Even those who enjoyed the ranching lifestyle expressed concerns about the poor quality of food, the lack of clothing being purchased for them, inadequate payment for work on the ranch, and the manner in which they were treated by some staff.

Eagle Rock cannot be viewed simply as an aberration. The serious nature of complaints that are received and investigated by the Ombudsman's office concerning children and youths are growing in volume. Close to 2000 jurisdictional complaints were received in 1989 in this area.

The child's right to administrative review

Should children and youths in state care have access to formal complaint procedures? It has been suggested that providing access to formal review and appeal mechanisms for children and youths is unnatural and that children cannot, and should not be permitted to "grieve" parental decisions. In fact, the MSSH Helpline for Children is a formal complaint mechanism available to children or youths who want to complain about the actions or inactions of their parents or others in matters related to their safety and well-being. It has also been suggested that to provide access to appeal mechanisms for children and youths in state care is to "open the floodgates" to the expression of "insignificant complaints" and to provide opportunities for young people to "manipulate the system". This office strongly disagrees with these views.

How often do parents hear children asserting their belief that a parental decision or action is unfair? Caring parents regularly provide children with opportunities to air their grievances and assist them to present their points of view in age appropriate ways. Fairness is a central theme in all human relationships. The child's opportunity to be heard and to have her or his opinions considered when an important parental decision is being made that affects her or him is a vital aspect of fairness within families. Fair problem solving processes act as learning tools for responsibility and the development to maturity.

Many children and youths placed out of their homes in provincial care have not consistently experienced fairness in their past relationships with adults. This poses a significant challenge of re-education for alternate caregiving systems. For young people in state care, parenting functions, usually carried out by natural parents, are shared with foster parents, child and youth care workers, social workers, probation officers, counsellors and other service providers. Each alternate caregiver is delegated with certain "parental" responsibilities within a complex accountability system. The attrition rate of these alternate service providers is traditionally quite high. From the perspective of the child or youth in care, any resemblance to a "normal" family system must appear remote.

When consensus is not achieved for important decisions made within this complex service delivery system, fairness requires that formal review or complaint resolution mechanisms be made available. Many children and youths do not yet have the necessary skills or abilities to represent their points of view appropriately when disagreements arise. In such cases, they may benefit from access to an advocate who can assist them and ensure that their views and interests are independently and fairly represented prior to a decision being made.

A common objective of service providers is to assist young people to express themselves in age-appropriate ways and to help them develop trust relationships, particularly with persons in authority. Fair administrative review procedures can assist in the achievement of this goal by empowering young people to challenge, in appropriate ways, decisions of authority figures; by assuring the young person a fair hearing; and through the non-defensive reaction of the person in authority to the challenge. An effective complaint and review mechanism can also act to defuse the angry response of a child or youth when a decision is made with which she or he disagrees.

During the past ten years of complaint investigations involving children and youths, this office has been greatly impressed by the constructive manner in which young complainants have accepted reasoned findings which were not to their liking. This office has never refused to investigate a complaint from a young person as "frivolous or vexatious". It is true that some young people are not able to articulate and focus their concerns well. Sometimes their anger at "the system" impedes their ability to problem solve. Sometimes a complaint leads this office to initiate an investigation that may not be directly related to the original concern of the youth. In the great majority of cases complaints are resolved to the satisfaction of both the young person and the authority.

Of serious and continuing concern, however, is the frequency with which complainants, or prospective complainants, express fears about possible reprisals by authorities if they contact this office. This poses significant dangers in a system where children, youths, parents, and service providers are dependent upon government for services, contracts, or employment. The vulnerability of the complainant population, particularly children and youths, requires strong measures by government and Ombudsman officials to protect and defend the statutory right of every person to complain to this office, as well as to other available review and appeal mechanisms.

Complaint resolution mechanisms, including formal appeal procedures, have been developed for adults in order to ensure that individual citizens are treated fairly, and are heard, when public authorities make decisions with which they disagree. This system has served society well by providing safeguards for individuals in their dealings with government bureaucracy, where a great power imbalance exists. This system, when properly planned and implemented, can act as a role model for young citizens in reinforcing society's belief in "fair play" and due process.

This office deals extensively with complaints concerning children and youths in the community and in institutions. This experience has demonstrated that, in the great majority of cases, complaints from young people are not motivated by a desire to "manipulate", a term that is sometimes used in imprecise, even derogatory ways. Children and youths are, by virtue of their age and dependent status, vulnerable citizens. This inherent vulnerability is magnified when they are removed from their families and placed in care.

Child, youth and family service professionals work in a complex bureaucracy that serves an essential role in assisting vulnerable children, youths and their families. Their codes of ethics usually reinforce the need for advocacy to ensure the primacy of the client's needs and interests. In most cases, problems that do arise are resolved through the skilled intervention of these professionals.

However, in a large and complex bureaucracy, unfairness does occur requiring resolution or rectification through a formal and fair process of internal administrative review. When resolution is still not achieved, and when the correctness and fairness of decisions or actions may adversely affect an individual's fundamental interests, principles of administrative fairness require that independent review mechanisms exist. These principles should apply equally to children, youths or adults, although the special vulnerability of children and youths may require different approaches.

This office is particularly concerned about the relative absence, inadequacy or inconsistent application of administrative advocacy and review mechanisms within, and across, ministries intended to safeguard the rights of children and youths and fairly resolve concerns as they arise. We believe that a significant proportion of complaints concerning children and youths could be avoided or resolved through

a) a provincially driven, locally delivered, planned continuum of cross-ministry, multi-disciplinary services to reduce or eliminate mandate confusion, service gaps and related delays in administrative planning and decision making concerning children and youths,

b) defined multi-disciplinary approaches to case management practice with cross-ministry system supports at the local, regional and provincial levels to strengthen accountability, integration, consensual dispute resolution and the right of the child to be heard and fairly represented,

c) internal administrative review and complaint resolution mechanisms within each ministry that are explicitly stated, routinely communicated in plain language, easily understood and accessed by children, and consistently applied in accordance with principles of administrative fairness, and

d) independent administrative advocacy and review mechanisms to be fairly and uniformly applied across all government ministries providing, funding and regulating services to children and youths.

Previous recommendations in this section are intended to address a) and b). Current provisions, in legislation, policy and practice, do not adequately address the need for

- administrative review or appeal mechanisms that are sensitive to the special needs, problems and vulnerabilities of children and the complex cross-ministry nature of publicly funded services, and
- advocacy to ensure that children and youths are fairly heard and represented when important administrative decisions are being made that affect them.

Administrative review procedures

In some ministries, formal internal procedures to handle complaints from or about special needs children and youths have been established. In others, they may exist informally but are not clearly defined in policy or consistently communicated to clients.

Where a ministry has explicitly defined a fair internal complaint resolution mechanism, our practice is to refer the complainant to this procedure on the understanding that he or she can return if not satisfied with the fairness of that process. (Note: Where a right of appeal exists against the substance of an administrative decision, this office's involvement is limited by Section 11(1) of the Ombudsman Act until the other remedies have been exhausted.)

Many of the complaints made to this office are resolved to the satisfaction of the complainant and the authority through a process of mediation. Where children and youths are the subject of the concerns being raised, this office operates in accordance with the Canadian Ombudsmen Declaration of Principles on the Handling of Children's Complaints requiring that:

1. Complaints involving children or youths be given priority. Time has a different meaning for children than it has for adults. Undue delay in hearing a complaint makes the Ombudsman (or the authority) part of the problem instead of the beginning of a solution.

2. Wherever possible, complaints be heard in the child's or youth's environment where the concern most likely arose. (This office makes regular visits to institutions and frequent field trips are made in the course of certain investigations.)

3. Where a child or youth appears to be incapable of understanding or is not able to advocate properly for his or her rights and where no one else is available, direct action should be taken to arrange advocacy or legal counsel.

4. Staff be recruited and trained who understand, and are able to relate effectively to, children and youths.

5. Appropriate referrals be made when the Ombudsman is not authorized to investigate a particular complaint.

6. Where an alternative administrative remedy exists which has not already been exercised, the Ombudsman must be assured that the remedy is adequate, and that the child or youth understands it and is assisted in obtaining an advocate and/or legal counsel.

7. Where a case is declined because an adequate alternative remedy exists, the Ombudsman should monitor, on an ongoing basis, to

ensure that the administrative remedy is viable and that complaints are fairly heard without undue delay.

8. Where an investigation is commenced,

a) the child's or youth's representative, parent, guardian, advocate and legal counsel be appropriately informed of steps to be taken and possible outcomes;

b) the child or youth be personally involved to the extent that is possible;

c) the child's representative be appropriately and regularly apprised of significant developments;

d) communication with the child be in language that is clearly understandable to the child;

e) principles of administrative fairness be strictly adhered to and decisions communicated with complete reasons.

Similar principles may be usefully adapted by administrative authorities whose responsibilities include the provision of services to children and youths. When these responsibilities are contracted out to individuals or community agencies, provision should be made through the contracting process to ensure the existence of clear and formal avenues of complaint concerning children or youths.

In May 1984, the Federation of Private Child Care Agencies (FPCCA) of B.C. developed "Standards of Children's Residential Care Facilities". The FPCCA is a voluntary association of individuals and agencies which contract with various ministries of government to provide residential and day programs for special needs children, youths and their families. In an introduction to the Standards Manual, it was observed that

> There is little doubt that the quality of service provided to children in British Columbia varies greatly. The need for a province-wide standardization of care has never been felt more strongly than now.

Notwithstanding improvements within individual ministries, this need still exists. One standard required by the FPCCA was that a Children's Grievance Procedure be established as follows:

> The programme shall have a written children's grievance procedure or advocate's grievance procedure that is explained in a clear and simple manner so that it may be easily accessible to them without the fear of retaliation. This procedure shall include the following elements:
>
> a) regular opportunities. . . for airing general complaints or disagreements in the presence of other children in care and program staff;
>
> b) direct access to the person in charge of the programme or facility;
>
> c) hearings before an impartial outsider(s) approved by the Ministry;
>
> d) unrestricted opportunity to correspond with public officials such as the Provincial Ombudsman (for children in provincially operated facilities), M.P.'s, M.L.A.'s and the Prime Minister.

This office commends the FPCCA for this initiative and notes that access to the Ombudsman's office is not restricted to "children in provincially operated facilities." This standard has yet to be applied in many, perhaps most, publicly funded child care programs. Grievance or complaint procedures like those suggested by the FPCCA are not routinely or uniformly required of child and youth care programs by government ministries as a condition of the contract or licensing.

It is the position of this office that each ministry should have in place explicitly stated and fair internal administrative review procedures. The routine communication of these procedures to all relevant parties, particularly children and youths, should be in plain language that is easily understood. A management and organizational ethic is required which expects and actively encourages the appropriate expression of public concern when disagreements arise concerning children or youths. This is vital in a sector where public officials have broad discretionary powers to make many important administrative decisions affecting the safety and well being of children and youths.

Administrative review mechanisms are required to ensure that complaints concerning children and youths are fairly heard. Of fundamental importance to the fairness of this process is the child's or youth's right to be heard and the right to have his or her views represented by an advocate when important administrative decisions are being made that affect them.

Recommendation #16

That each Ministry responsible for providing or funding services in this sector of government act to ensure the existence of explicit and easy to use internal administrative review and complaint resolution procedures when concerns or complaints are received from or about special needs children and youths. These procedures should be defined in ministry policies, contracts and standards and be routinely communicated to children, youths and their parents or advocates in language that is easy to understand. These procedures should act to reassure complainants that reprisals will not result from a complaint being made.

Results of consultation with ministries

The tendency exists for staff in social service ministries to assume that, as complaints are routinely made by clients respecting the services delivered, clients must be aware of their rights to request an administrative review. This awareness cannot be assumed, particularly when dealing with vulnerable children, youths and families, and further steps are required to ensure that clients are made aware of the administrative review options available to them.

Each ministry serving special needs children, youths and their families will review current approaches and ensure the existence of explicitly defined and clearly communicated written administrative review procedures. Children, youths, parents, service providers and other natural advocates will be routinely assured that it is acceptable and expected that, when concerns arise, they will be reasonably expressed to appropriate authorities. No negative reprisals will result from making a complaint. The use of "passports" and other similar methods of ensuring that children and youths are advised of their rights at the point of entry to the service system will be carefully considered by the relevant ministries.

While review procedures may vary based on different administrative structures within individual ministries, these procedures will be reviewed by the Child and Youth Secretariat and the Ombudsman's office to ensure their adherence to principles of administrative fairness. When resolution is not achieved through internal review, the Deputy Ministers' Committee on Social Policy has proposed that the Ombudsman office's child and youth team act as the external review mechanism.

External administrative review and appeal

We believe that implementation of many of the previous recommendations in this report could provide for the avoidance of, or an expeditious and consensual resolution to, a significant proportion of complaints concerning children and youths receiving public services. Some complaints, however, may not lend themselves to consensual resolution. When fundamental disagreements arise about the best interests of a child, access is required to a statute-based external review or appeal procedure, established in accord with the principles of administrative fairness.

As this province enters into a process of comprehensive review of, and improvement to, child, youth and family services, it is timely to review alternative approaches used in other service sectors and provincial jurisdictions where child-related review and appeal mechanisms have been incorporated in legislation.

Ontario

Ontario's Child and Family Services Act came into force on November 1, 1985 after eight years of public consultations. A cohesive philosophy for, and approach to, services to children and families and the protection of children is reflected in a Declaration of Principles which, among other provisions, elevates to the status of law a philosophical and practical approach intended to promote

- the practice of giving parents and children the opportunity to be heard when decisions affecting their interests are being made and when they have questions or complaints regarding the provision of service,
- the need for clear criteria and procedural safeguards to define the discretion of service providers if the fundamental interests of children or parents will be affected by a decision,

- the necessity of periodic review to monitor the provision of service to children and families. This principle is reinforced throughout the Act through the identification of service decisions that are particularly invasive to a family's autonomy and rights, and through provisions for review mechanisms.

Section 64 of Ontario's Family and Child Services Act requires that each Children's Aid Society develop a written complaints procedure that must be approved by a ministry director. The child, his or her parent, or another person representing the child may make use of this internal complaint procedure which "should be integrated with case management practices for children in foster care". If dissatisfied with the outcome of that review, the complainant can request a hearing by the society's board of directors. If still not satisfied, the final recourse is an appeal to a ministry director.

Section 34 of the Ontario legislation establishes a Residential Placement Advisory Committee whose responsibilities are

- to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential services and alternatives to residential services,
- to conduct reviews,
- to review an existing or proposed residential placement of a child,
- to name a person to maintain contact with, and to be involved in the case if the person who had custody does not do so.

If a child over 12 is dissatisfied with this Committee's recommendations, he or she may apply to the Children's Services Review Board, a decision-making body which, after conducting a review may order that the child be transferred to another residential placement, if the Board is satisfied that one is available, or may order that the child be discharged from the residential placement, or may confirm the existing placement. (Section 36(6))

The Children's Services Review Board is also authorized to review decisions related to the licensing of children's residences, adoption placements, and access to and disclosure of information. An appeal of any decision made by the Board may be taken to the Divisional Court of Ontario.

Quebec

Quebec's Youth Protection Act, as previously indicated, contains comprehensive provisions intended to safeguard the rights of children, youths and families. The Youth Protection Committee is mandated with broad powers to monitor the implementation of services provided under this legislation. These powers include referral of a matter to the Court for remedy when the Committee's recommendations have not been complied with and where the Committee has reason to believe that the rights of a child have been violated.

Quebec's Youth Protection Act provides for more comprehensive access to Court review of administrative decisions than is the case in other provinces. Under Section 100 of the Act an appeal lies to the Superior Court from any decision or order of the Youth Court rendered under the authority of this Act. This appeal may be brought by the child, his parents, the director of youth protection, the Youth Protection Committee, the Attorney General or any party in the first instance.

The Youth Protection Act spells out extensive case management requirements including guidelines to directors of youth protection for voluntary, preventive interventions as well as services to children in care. For example, Section 57 states that

> The director shall periodically review the case of every child whose situation he has taken in charge. He shall, where applicable, satisfy himself that every measure designed to ensure the child's return to his parents is taken, if such a return is in his interest, or ensure that the child has living conditions appropriate to his needs and his age.

Pursuant to Section 25.1 of the Youth Protection Act the Youth Protection Committee is vested with the power of a public inquiry commission, except for the power to impose imprisonment, and may subpoena witnesses. Twelve commissions of inquiry were held during 1989. In ensuring that the protection of childrens' legislated rights are being appropriately applied, the Youth Protection Committee is authorized to

> ... investigate any situation where it has reason to believe that the rights of a child or of a group of children have been encroached upon by persons, establishments or bodies unless the Court is already seized of it. (Chapter III, Section 23).

Where "urgent measures" are deemed necessary for the protection of a child, the director of youth protection, who has a similar function to B.C.'s Superintendent of Family and Child Service, is required to consult, whenever possible, with parents. "Urgent measures" involve the removal of a child from his or her family and placement in a foster home, reception centre or hospital. If a parent or child objects, the director may compel consent but must submit the matter to the Court with the least possible delay and may not apply "urgent measures" for more than twenty-four hours without obtaining a Court order.

The director of youth protection is authorized under Division III, Section 54 of the Youth Protection Act to recommend prescribed voluntary measures intended to respond to a child's needs within his community including requirements that counselling or other assistance be provided to the child and his or her family. Where voluntary interventions are deemed necessary by the director and when the parents or a child over 14 years of age refuse voluntary services, the director must attempt to reach agreement with the parties. If no agreement is reached, the matter must be referred to the Court. If agreement with the parents and child is achieved, it must be recorded in writing. If the parents or child (over 14 years) withdraw from voluntary services and where the director deems the child to be at risk as a result of this withdrawal, the matter must be referred to a Court (Division III, Section 52-53).

Alberta

Alberta's Child Welfare Act states that in exercising any authority or making any decision pursuant to this Act, a Court and all persons must consider the interests of the child and the family and

> ... a child, if the child is capable of forming an opinion, is entitled to an opportunity to express that opinion on matters affecting the child and the child's opinion should be considered by those making decisions that affect the child. (Section 2(d))

The process for Administrative Appeals is spelled out in Section 86 of Alberta's Child Welfare Act. Any child and any guardian, foster parent or other person who has had the continuous care of a child for six of the past 12 months and who is affected by a director's decision, may appeal that decision to an Appeal Panel (consisting of three to seven persons), appointed by the Minister. The proceedings of the Appeal Panel are governed by Alberta's Administrative Procedures Act. An appellant may be represented at a hearing by a lawyer or by any other person, including the Children's Advocate.

Pursuant to Section 86(2) of the Child Welfare Act, appeals are allowed of the decision of a director respecting

a) removal from or placement in a foster, adoptive or other home of a child in care (by Court order or agreement),

b) permission or refusal to permit a visit with a child-in-care by a person who has a significant relationship with the child,

c) the disclosure or refusal to disclose information about the appellant,

d) the provision of, or refusal to provide, any support services to a child 16 years of age or over by entering into a support or custody agreement,

e) the refusal or failure of a director to enter into an agreement when, in the opinion of that director, the child is in need of protective services,

f) the refusal or failure of a director to enter into an agreement in respect of a handicapped child,

g) any other matter prescribed in the regulations as being subject to an appeal.

An appeal must be served on the director within 30 days of the date on which the appellant receives notice of the decision appealed. A person who has applied to a director to become a foster parent or to adopt a permanent ward and who has been refused may appeal that decision (Section 86(3)(4)). The Appeal Panel may, pursuant to Section 85(1) of the Act and Regulations, confirm, reverse or vary the decision of the director. The decision of an Appeal Panel is final.

The Vocational Rehabilitation for Disabled Persons program in B.C.

During 1989, the Ombudsman's Office was invited by the Ministries of Advanced Education, Training and Technology, Health, and Labour and Consumer Services to assist in the development of internal review and independent appeal mechanisms for the Vocational Rehabilitation for Disabled Persons (VRDP) program, established as part of a Canada Assistance Plan (CAP) cost-sharing agreement between the federal and provincial governments.

The British Columbia appeal development process was initiated by Deputy Ministers responsible for VRDP and the planning process was an enlightened one, involving comprehensive consultations with consumer and other groups and including a strong commitment to staff and tribunal member training and supports. A cross-ministry appeal mechanism was approved by the Cabinet Committee on Social Policy in October 1989, and "emphasizes a cooperative and coordinated approach". It was recognized by these ministries that

> In order to have effective administration of the appeal mechanism and related functions, ensure fairness and prevent excessive numbers of appeals, training of service delivery staff and tribunal members (especially Chairpersons) is regarded as a key factor. (Orientation Plan, p. 1)

The training of service delivery staff and their supervisors emphasizes the principles of administrative fairness and their application to strengthen administrative processes. It has been estimated that 1,200 service delivery staff in four ministries and many contracted agencies at various locations around the province will require training.

The appeal process requires that service delivery staff making eligibility decisions, notify the client of his or her right of appeal. Appeals are limited to eligibility for goods and services and do not extend to issues of availability. Appellants must submit a written appeal to the Appeal Secretariat within 30 days. The Secretariat then immediately notifies the designated contact in the ministry involved who is responsible to ensure that an internal review of the case is completed within 30 days.

Each ministry designates a staff person to coordinate internal reviews. She or he then designates an official of the ministry, who may be the manager of the program, to carry out an internal review. The reviewer may interview the client or his or her advocate to obtain an explanation of the complaint and to explain the position of the ministry, and require that additional assessment procedures be carried out. The reviewer then determines whether there has been any administrative error or omission and whether the decision is in accordance with ministry policy and the VRDP Agreement. After reviewing all the circumstances of the case, the reviewer makes any appropriate adjustments and reports the findings in writing to the coordinator, who immediately informs the Secretariat.

If the matter is not resolved through the internal review process, the Appeal Secretariat will immediately notify a tribunal chairperson to hear the case. The Appeal Tribunal comprises the chairperson, appointed by the Minister of Advanced Education, Training and Technology in consultation with other ministries and the community, a member nominated by the ministry who is not an employee of a ministry with programs cost-shared under VRDP, and a member nominated by the appellant who is not a spouse, relative or person with a vested interest. The tribunal is to conclude hearings within 30 days and communicate its decision in writing and with reasons within 14 days of the conclusion of the hearing.

The appellant may be accompanied by an advocate or agent and may call witnesses. Parties have the right to be present during the presentation of all evidence in the case and have the right to cross-examination.

As well as the provision for representation by advocates, (of particular relevance to child, youth and family programs) is the VRDP emphasis on fair process during the internal review stage and the recognition of the need for ministry staff to be trained in the principles of administrative fairness. This office believes that this commitment will benefit both the clients and the ministries administering VRDP. A significant proportion of complaints can be expected to be resolved without requiring the involvement of an Appeal Tribunal.

A Training Committee has been established to develop training packages and standard public awareness information on the right to appeal and the appeal process. The Secretariat is established under contract to the Deputy Minister of Advanced Education, Training and Technology. Each ministry is responsible for the ongoing training of its own staff and those of its contracted agencies. A Steering Committee has also been established at the Assistant Deputy Minister level to review and amend policy related to inter-ministry protocols or appeal process.

A statutory basis for this cross-ministry appeal mechanism is under review within the respective ministries.

Appeals under the GAIN Act

The Guaranteed Available Income for Need (GAIN) Act (Section 25) provides for appeals for individuals who are dissatisfied with a decision respecting the refusal, discontinuance or reduction of income assistance or social services. To date, only section 25(1) and (2), allowing appeals for income assistance, has been proclaimed.

Social services, which are not presently covered by the appeal provisions, are defined in Section 1(f) as

> . . . services or organized activities, provided to or on behalf of individuals or families or the communities in which they live, that are necessary for the purpose of facilitating access to the necessities of life, maintaining or improving employability or improving social functioning of individuals and families and, in particular, without limiting the generality of the foregoing, includes
>
> (a) social services having as their object the lessening, removal or prevention of the causes and effects of poverty, child neglect and suffering;
>
> (b) case work, counselling, assessment and referral services;
>
> (c) residential and foster home care services or any form of child care services;
>
> (d) day care, homemaker and similar services;
>
> (e) adoption services;
>
> (f) residential services for adults;
>
> (g) occupational training, retraining, rehabilitation and other employment related services for mentally or physically handicapped individuals, or individuals having unusual difficulty in obtaining or maintaining employment;
>
> (h) services designed to encourage and assist residents of a community to participate or to continue to participate in improving the social conditions of their community;
>
> (i) consulting, research and evaluation services respecting income assistance or social services; and
>
> (j) administrative, secretarial and clerical services, including staff training, and coordination of volunteers, respecting the provision of income assistance or social services.

Many of the social services defined in the GAIN Act are intended to prevent family breakdown, child abuse and the need to place children in state care, by supporting communities, families and children. Currently, parents or children have no recourse to appeal under the GAIN Act when these social services are refused, discontinued or reduced. In this regard, the proclamation of Section 25(3) and (4) of the GAIN Act by the Cabinet is eagerly anticipated by many groups within the social service community who perceive the need for a statutory emphasis on prevention.

Appeals under the GAIN Act provide for a tribunal method of appeal after internal administrative reviews within the MSSH have been exhausted. Three person tribunals are established under Section 25(2) of the GAIN Act. One person is selected by the MSSH, one by the appellant and these two persons select a third who chairs the tribunal. A tribunal reviews matters that are within the guidelines established in the GAIN Act and Regulations and its decision is binding on the MSSH. The tribunal approach to appeals, as applied in the income assistance area, may require significant adaptation in the complex and specialized field of child, youth and family services.

An adaptable, simple to use, and expeditious approach to conflict resolution and administrative review is required when dealing with special needs children, youths and their families. Great variance exists in the abilities of individual children and youths to adequately represent their points of view and be heard by authorities when important administrative decisions are being made that affect them. In most cases, parents act as advocates to ensure that their child or youth is heard. For children and youths with special needs, service providers often play an advocacy role intended to ensure fair treatment of clients. For children who are wards of the state, the guardian role is established in legislation as well as, in some jurisdictions, a separate advocacy role. Callers frequently assume that this office plays an advocacy role, particularly in cases involving children. The need for child advocacy is widely accepted. Its appropriate application, particularly within the public sector, is often misunderstood. In part, this may reflect the need to define more precisely its application within various contexts.

Child and youth advocacy

The Eagle Rock investigation has confirmed what we have observed in other investigations concerning special needs children and youths. Children and youths are, by virtue of their age and dependent status, always vulnerable. Children and youths who are placed in provincial care are particularly vulnerable. The special vulnerability of children, all of whom at one time or another receive services and many of whom are placed in the care of the province, has been well documented in the professional literature.

In 1978, the Canadian Council on Children and Youth (CCCY) published "Admittance Restricted: The Child as Citizen in Canada". This report on the status of children and youths in Canada, which is still relevant twelve years later, stated the following:

> There are over 7 million children in Canada. They make up about a third of our population. Yet, they remain largely invisible in social policy and planning. They do not have the right to vote and they cannot influence policy. For various reasons and in varying degrees, their lives are determined by people other than themselves. On these others — on parents, teachers and adult society in general — falls the responsibility for the quality of the lives of children. (Page 1)

In proposing future directions, the CCCY report identified a number of priority areas to be addressed concerning children and youths including

- the need for legislation to express positive minimum standards of care rather than negative prohibitions on parental behaviour,
- the need to have that legislation backed up by progressive child welfare policies,
- the need to ensure that children taken into care receive the services they need and do not suffer governmental neglect,
- the need for review of decisions affecting a child's status and for greater flexibility in the dispositions available to the court,
- *the need for the child to be heard in all cases affecting his or her status,* (our emphasis)
- the need for the widespread establishment of unified Family Courts,
- the need to ensure appropriate education for all children regardless of any handicapping condition.

("Admittance Restricted", p. 158)

Many similar issues and concerns were reviewed by British Columbia's 1974 Royal Commission on Family and Children's Law (the Berger Commission) which submitted thirteen reports to government covering areas ranging from Unified Family Courts (Fourth Report), Children's Rights (Fifth Report, Part III), The Special Needs of Special Children (Fifth Report, Part IV), The Protection of Children (Fifth Report, Part V), and Native Families and the Law (Tenth Report). A discussion draft of a proposed Children's Act which incorporated a statement on the rights of children was also submitted. The voluminous work of this Commission has been influential in jurisdictions across Canada.

Eagle Rock, along with many other investigations by this office involving children and youths, has led this office to conclude that the needs identified by the CELDIC, CCCY and Berger Royal Commission Reports remain largely unmet and may still be viewed as topical and worthwhile agenda items for government and communities in efforts to establish a fair, effective and responsive service delivery system in this province.

Of fundamental importance to this office, with its responsibility for administrative fairness, is the implementation of the child's right to be heard in matters that affect him or her. This simple notion, with all its fairness connotations, is not always reasonably translated into action within government bureaucracies. The varying developmental capabilities of children and youths add to the complexity of the task of effectively implementing the child's right to be heard.

In 1987, the Ombudsman appointed a Deputy Ombudsman for Children and Youth to work with an interdisciplinary team of professionals within the Ombudsman's office in this specialized area of administrative concern. In child and youth issues, the role of this office is often to ensure that a child's perspective is fairly heard when administrative plans, decisions and recommendations are being made in his or her best interests. This has frequently been interpreted as child advocacy.

A 1980 discussion paper on Child Advocacy, prepared for the Ontario Ministry of Community and Social Services noted that

> The history of the children's advocacy movement in Canada and elsewhere is a lengthy one. The early reformers sought to eliminate child labour and later to develop both a separate juvenile justice system as well as laws to protect the physical and emotional well-being of children. In the past two decades there has been a major increase in advocacy efforts for children within Canada.... (p. 2)

A dictionary definition of advocacy is "pleading in support of". It is best exemplified through a lawyer's representation of a client in the Courts. Child advocacy has become a recognized area of study in law schools. In recent years, the legal notion of individual client advocacy has been expanded. Child and youth advocacy refers to active efforts to make societal institutions more responsive to the needs of children and youths. In matters before the Court, Family Advocates may be appointed by the Attorney General under the Family Relations Act to represent children in hearings pertaining to protection, custody and access. This office has previously suggested to government the need to extend access for children to Family Advocates, particularly in cases where custody disputes have reached a level that may cause lasting harm for a child. Guardian ad litem programs in the U.S.A. and U.K. appear to be promising in ensuring that a child's views and interests are fairly and independently represented to the Court.

Child advocacy before the Court: guardians ad litem

Independent Representation for Children in Need (IRCHIN), in their training material for British Guardians ad litem, quoted from that country's Short Report (1984):

> If half the funds and intellectual effort which had gone towards developing strategies for funding alternative families had been put into what we can only lamely call "preventive work" there would be unquestionable advantage to all concerned.

In 1984, legislation in the United Kingdom was established requiring that local authorities — the deliverers of child welfare and social services — set up panels of Guardians ad litem to act for children in matters of adoption, freeing for adoption, parental rights, access and care proceedings. Guardians ad litem are appointed by the Court to represent the viewpoints of children where it appears that a conflict may exist between the interests of the child and those of his or her parent or guardian. In such cases, Section 32A (1) of the Children and Young Persons Act states that

> ... the parent or guardian is not to be treated [by the Court] as representing the child or young person or as otherwise authorized to act on his or her behalf.

The duties of the Guardian ad litem are:

a) To investigate all matters related to the proceedings;

b) To regard as the first and paramount consideration the need to safeguard and promote the infant's best interests and to take into account the wishes and feelings of the infant;

c) To consult, and work cooperatively with, a solicitor who has been instructed to represent the child;

d) To make a written report to the Court and undertake any other duties as directed by the Court.

A primary task of the appointed Guardian ad litem is a consensus seeking one to "isolate areas of agreement between all parties so that they may serve as a basis for future discussion". They must also ensure that local authorities have properly complied with their statutory duties, and particularly those preventive duties that are prescribed in legislation.

The training program recognizes that there is no single formula guaranteeing a child's best interests:

> ... any child whose future has to be decided in litigation has already been deprived of his (her) best interests... what we are looking for is the least detrimental alternative... or even the least intrusive alternative...". (IRCHIN "Training Notes for Guardians ad litem, p. 10)

The independence, training and strong sense of professional integrity required of Guardians ad litem is also stressed. They are first accountable to the child, whose voice and best interests they represent, and to the Court which appoints them as an independent advocate who may be called upon to criticize parents and child welfare authorities.

In the United States approximately 300,000 children and youths are removed from their homes and placed in state care each year. In 1976, King County Superior Court Judge David Soukup began exploring ways to ensure that the best interests of abused and neglected children were consistently represented to the Court. In 1977 he founded the Court Appointed Special Advocates (CASA) program. 388 CASA programs now operate in 47 states using trained community volunteers to speak on behalf of children before the Court and to serve as the Court's "eyes and ears". They are empowered to make recommendations to the Court concerning the child's best interests.

A CASA program is required to operate as an officially recognized agency of the state or county government or be registered as a nonprofit organization. Volunteers are screened and must undergo a minimum 15 hours (but optimally 40 hours) of training and are routinely monitored and evaluated in their "work". They function either as Guardians ad litem for children or as assistants to attorney Guardians ad litem. Family relations and delinquency cases are accepted, but the first priority is in abuse and neglect matters.

CASA programs are said to save the Court time through the independent information that they bring to the Court, and studies have reportedly shown that CASA cases are often resolved with fewer hearings than cases where volunteer Guardians ad litem are not assigned. A number of Judges across the U.S. have been quoted in support of CASA programs. Our discussions with CASA officials in the U.S. indicate potential for the Guardian ad litem "panel of experts" model to be adapted on a regional basis to address administrative matters and, where appropriate, to assist Family Advocates appointed by the Attorney General to address Family Relations or Family and Child Service Act matters that are before the Court.

Child advocacy in B.C.

Except for the appointment of Family Advocates under the Family Relations Act, in British Columbia, where more ministries share the mandate for child, youth and family services than in any other Canadian province, no statute-based child, youth and family advocacy mechanism exists in child welfare legislation. Furthermore, children, youths, parents, service providers and other advocates in the child welfare system have no access to independent appeal mechanisms with the power to change administrative decisions which are found to be unfair.

The Office of the Superintendent of Family and Child Service and the Office of the Ombudsman with its Deputy Ombudsman for Children and Youth each share a mandate to ensure that special needs children and youths receive fair treatment within the child welfare system.

The Ombudsman's mandate spans all ministries and his accountability to the Legislature provides him with independence from the Executive Branch of government. The Ombudsman Act also authorizes him to report directly to the Legislature and the public. The classical Ombudsman is not, however, an advocate. His stance is one of impartial investigator. The Ombudsman may make recommendations to government ministries but is not authorized to direct that services be provided or that an administrative decision be changed.

The MSSH Superintendent of Family and Child Service is appointed at the Assistant Deputy Minister level and has no authority over child, youth and family services provided by other ministries. Section 3 of the Family and Child Service Act states that

> (1) The minister shall designate as Superintendent of Family and Child Service a person appointed under the Public Service Act, and the superintendent shall be responsible to the minister for the administration of this Act and the

> regulations and be the Superintendent of Child Welfare.
>
> (2) The powers of the superintendent, for the purposes of this Act and the regulations, include the power, subject to this Act and the regulations,
>
> a) to enter into an agreement with a person for the development or provision or both, of services to children or their families in the Province, and
>
> b) to enter into an agreement with a person for the custody of a child of whom the superintendent is guardian, or of whom the superintendent has custody, but it is an implied term of the agreement that the superintendent may retake custody of the child at any time, but a person who enters into an agreement with the superintendent under this subsection is an independent contractor and is not an employee of the government.
>
> (3) The superintendent shall direct the investigation of reports that children may be in need of protection and the keeping of records of the reports and investigations
>
> (4) The superintendent may delegate any of [her] powers, duties, functions or capacities under this Act to any person or class of person, and that person or class of person shall be subject to his direction.

From 1980 to 1986 the position of Superintendent was held by the Deputy Minister of MSSH. This arrangement was seen by many within the child welfare field to weaken the independence of the office and its ability to advocate for the needs of children and youths who were in care or receiving ministry services. In fact, the Family and Child Service Act makes no direct reference to an advocacy role for the Superintendent.

In 1986 a separate Superintendent was appointed and, following his leaving office a little more than one year later, he observed that

> Although the legal mandate was to be responsible for the administration of the act, the internal responsibilities were for the Family and Child Service Division (a policy, procedure and consultation unit), and the Inspection of Standards Unit (a review and audit group). The delivery of service through social workers in the field was not under the line direction of the Superintendent. This resulted in ambiguity in the extent to which the Superintendent was "in charge", and raised questions as to whether the Family and Child Service Act was being observed. ("Issues for Family and Children's Services in B.C.", Andrew Armitage, Nov. 87, p. 3)

Recently, the MSSH further removed the Superintendent's role from day-to-day administration of the Family and Child Services Division. She is now responsible for the Inspection and Standards Unit which, unlike its counterpart in the Corrections Branch, has no statutory basis. This reorganization of roles within the MSSH has enabled the Superintendent to place a greater priority on the establishment and monitoring of administrative child welfare standards within the ministry.

This office believes that the roles of the Ombudsman and the Superintendent of Family and Child Service are important ones in helping to ensure that the interests of children and youth in need of protective services are fairly considered. Neither office, however, has an explicit or comprehensive mandate for child advocacy. Unlike British Columbia, legislative tools intended to represent and safeguard the rights of children and youths are explicitly defined in Quebec, Ontario, Manitoba and Alberta. These provinces have, however, reviewed and amended their child welfare statutes since the B.C. Family and Child Service Act was proclaimed.

Child advocacy in Ontario

Ontario's child welfare services are administered through Children's Aid Societies with the provincial government, through the Ministry of Community and Social Services, maintaining strong legislative accountability through the Child and Family Services Act. This Act defines a "service" to include

> i) a child development service,
> ii) a child treatment service,
> iii) a child welfare service,
> iv) a community support service,
> v) a young offenders service. (Section 3(26))

Child advocacy has been formally recognized by the Ontario provincial government as an essential component of a responsive and effective child welfare system. Child advocacy in that province is seen as a diversified responsibility shared between government and the community. Its primary purpose is to ensure effective implementation of the child's right to be heard. In November 1985, the Office of Child and Family Advocacy was established pursuant to Section 98 of the Ontario Child and Family Service Act. The Director reports to the Assistant Deputy Minister, Ministry of Community and Social Services. When establishing this Office, the Ontario government recognized that

> ... in any service delivery system there will be those individuals whose needs have not been met through conventional routes and who will need the assistance of an advocate who can act with or on behalf of them to meet their needs. (MCSS Training Handbook p. 42)

The Office has no direct authority over the administrative decision-making process but is intended to be "a stimulus to the system to ensure its responsiveness". Activities undertaken by Ontario's Office of Child and Family Advocacy include:

1. Crisis intervention where a child's safety or well-being are perceived to be in jeopardy;

2. Monitoring children who are experiencing multiple placements;

3. Providing support to the Interministerial Placement Action Committee (IMPAC), which deals with "exceptional children" whose cross-agency service needs are not being met;

4. Providing consultation to case planning conferences to ensure the needs of a particular child are met;

5. Assisting parents and guardians in making contact within the service delivery system to find the appropriate service and to support them in their negotiations;

6. Receiving complaints from children-in-care;

7. Working with other ministries on projects of joint concern;

8. Acting in a liaison capacity with other provinces, advocacy organizations and the Office of the Ombudsman;

9. Training and providing information to service providers regarding service delivery to difficult-to-serve children. (MCSS Training Handbook pp. 43-45)

Children, youths, parents or guardians, friends or advocates, concerned professionals, members of the general public and politicians, may apply to the Office for assistance. Complainants are first encouraged to use internal complaint mechanisms which must be established by Children's Aid Societies under Ontario's Child and Family Services Act.

Child advocacy in Quebec

Chapter II of Quebec's Youth Protection Act contains an explicit statement about the legal rights of children, youths and families including the requirement for

- a focus on preventing family problems and promoting community involvement,
- the provision of continuous, stable care in as normal an environment as possible,
- parents and children to be fully informed of their rights, particularly the right to consult an advocate and the right of appeal,
- children to receive adequate health, social and educational services,
- children-in-care to have confidential communication with their lawyer, the director in charge of their situation, the Committee of Youth Protection, judges and clerks of the court, family members and any other person (unless contrary to his or her interests, when reasons will be given in writing),
- children-in-care to be disciplined in an appropriate manner which must be in the child's interest.

Under Chapter III, Division I of this legislation, the Youth Protection Committee is appointed by the government to

a) ensure the protection of the rights of the child under this Act and the Federal Young Offenders' Act;

b) investigate situations where it has reason to believe that the child's rights have been encroached upon;

c) take necessary legal means to remedy situations where the rights of the child are being encroached upon;

d) publicize the rights of children to children themselves and the general public;

e) make recommendations to the Ministers of Social Affairs, Education, Higher Education, Science and Technology and Justice;

f) conduct studies and research pertaining to its functions.

The Youth Protection Committee is accountable to the Minister of Justice and must provide him or her with an annual report which is tabled in the provincial legislature. Twelve local Committees have been established to carry out its mandate in the different regions of Quebec. When the provincial Committee's recommendations are not complied with within a fixed period of time, the Committee may refer the matter to a Court for review.

Child advocacy in Alberta

Alberta is divided into six regions for the delivery of child welfare services. Each region has a Director who is responsible for the guardianship of children in care as well as for the provision of services. The role of the Directors is comparable to that of British Columbia's Superintendent of Family and Child Service. Section 4 of Alberta's Child Welfare Amendment Act (Bill 55, 1988) provides for the establishment of an Office of the Children's Advocate whose responsibilities include:

1. Advising the Minister of Social Services and Community Health about matters relating to the welfare and interests of children who receive services under this act and the provision of those services;

2. Receiving, reviewing and investigating complaints or concerns that come to his attention respecting children who receive services under this act;

3. Representing the rights, interest and viewpoints of children who receive services under this act;

4. Performing additional duties conferred on the Office by the Minister and submitting annual reports to the Minister. (Section 4(3))

For the purpose of performing his duties and functions, Alberta's Children's Advocate may:

a) communicate with and visit a child or his/her guardian or other persons representing the child;

b) have access to necessary information relating to the child;

c) review or investigate and make recommendations regarding any matter relating to the provision of services to the child under this act;

d) represent a child who is receiving services when major decisions relating to the child are being made;

e) assist in appealing or reviewing a decision of a Director relating to the child;

f) provide assistance and advice to an Appeal Panel or a Court with respect to a child who is receiving services under this Act. (Section 4(4))

Appeal Panels are established pursuant to Section 84 of Alberta's Child Welfare Act. Appeal Panels have the statutory authority to overturn a decision made by the Director. The Children's Advocate is automatically notified of all requests for an appeal and if requested or on his own initiative, the Children's Advocate can represent the child before an appeal hearing.

The Children's Advocate plays an important role in monitoring case management practice in Alberta's child welfare system, from both an individual and systems perspective. For example, he receives a monthly list of children in care whose multiple placements are exceeding acceptable standards. In this way, he is able to commence a review of an individual case as well as monitor the system from an administrative policy perspective.

Administrative advocacy: the child's right to be heard

A number of social structures have evolved in British Columbia and elsewhere which have acted to institutionalize the notion that children are a vulnerable group requiring special safeguards to ensure that their rights are protected. A non-exhaustive list of agencies in British Columbia which include, as part of their function, concern for the rights and interests of children and youth include:

- the Family (Child) Advocate program within the Legal Services Branch of the Attorney General,
- the Office of the Superintendent of Family and Child Service within the Ministry of Social Services and Housing,
- the Office of the Public Trustee within the Ministry of the Attorney General,
- the Family Court Counsellor program within the Ministry of the Solicitor General,
- the Children's Advocate in the City of Vancouver,
- the Office of the Ombudsman, Deputy Ombudsman for Children and Youth,
- the Society for Children and Youth in British Columbia, (the provincial affiliate of the Canadian Council on Children and Youth),
- the Canadian Child Welfare Association whose membership includes British Columbia groups and individuals,

- the B.C. Youth in Care Network which is affiliated with the National Youth in Care Network,
- the B.C. Civil Liberties Association,
- the B.C. Human Rights Coalition,
- the B.C. Human Rights Council,
- professional and service organizations whose practices and codes of ethics often include an advocacy role (for example, child and youth care workers, foster parents, nurses, psychiatrists, pediatricians, psychologists, social workers, teachers),
- various groups with specialized concerns such as the B.C. Daycare Action Coalition, British Columbia Association for Community Living, the B.C. Coalition of Disabled and the Federated Anti-Poverty Groups of B.C.

The nature of child advocacy performed by these groups differs significantly and distinctions are necessary to ensure a common understanding. Some forms of child advocacy are inappropriate for certain groups, particularly those operating within the public service sector. For example, it is important to note the distinction that exists between administrative advocacy and political lobbying, an approach that may be used in legislative advocacy by consumer and class advocacy groups. Different types of advocacy include.:

- *Legislative advocacy*: referring to efforts to review and reform legislation to ensure that it accurately and fully reflects the needs of children and youths;
- *Legal advocacy*: referring to efforts within the judicial system to ensure that legislation pertaining to the care, protection and treatment of children and youths is properly and fairly applied;
- *Administrative advocacy*: referring to efforts to ensure, through adherence to procedures and ongoing monitoring, that organizations and services are relevant and responsive to the assessed needs of children, individually and collectively;
- *Class advocacy*: referring to efforts, generally from outside the service system, on behalf of a group, or class of children and youth with similar problems or needs;
- *Consumer advocacy*: referring to efforts of consumers themselves, in this case children, youth and their families, to ensure that their needs are adequately and appropriately met.

Together, these approaches to advocacy form a vital element in ensuring public accountability and fairness in the provision of services to children, youths and families. Both Ontario and Alberta have developed an impressive documentation of the processes taking place in those provinces to define and implement effective approaches to administrative child advocacy that operates largely in the public sector.

The essential link between child advocacy and the child's right to be heard was defined in the Child Advocacy discussion paper developed by Ontario's Children's Services Division:

> When one examines what is done under the ever expanding advocacy banner, no better unifying theme can be found than one which views advocacy as simply the effort to ensure that the child's right to be heard is maximized. In this context, the task of the Children's Services Division becomes one of developing and implementing measures which encourage this effort. Therefore, for the purpose of this paper, *advocacy is defined as any process or procedure which ensures that a child has the right and opportunity to be heard*. (Our emphasis)
>
> For some, this might be seen as a narrow interpretation of advocacy since the objectives of many advocacy efforts seem to go well beyond being heard. However, if one adopts a broad approach to the concept of being heard, then this definitional concern hopefully diminishes. Therefore, for example, the effort to obtain more government resources for children becomes a plea on behalf of the child unable to seek them himself. (p. 5)

In order to thrive, administrative child advocacy must be viewed by public authorities as an essential and healthy feature of a dynamic child welfare system. To be effective, it must also be carried out in an appropriate and reasoned manner. This requires due sensitivity to the essential distinctions made in a democratic, parliamentary system between matters of public policy, which are the responsibility of the legislative branch of government, and matters of administration, which are the responsibility of the executive branch of government. To practice effective administrative advocacy, these distinctions must be well understood by natural advocates, service providers and others concerned for the fair treatment of children and youths.

The reasons given for the Ontario Children's Services Division commitment to the child's right to be heard were outlined as follows:

> 1. It is consistent with society's view of what is fair and just.
>
> 2. It recognizes the importance of providing children with the opportunity to learn to be responsible decision-makers.
>
> 3. It acknowledges that children may make a unique contribution to the decision-making process.
>
> 4. It encourages more balanced and accountable decision-making. (p. 4)

The task of implementing the child's right to be heard was acknowledged to be a complex, but necessary, one:

> If properly done, it should make those of us who provide services to children accountable and thereby more effective. More than that, it should stand as a clear indication of our respect for the child, particularly the child with special needs, who has the most to gain or lose as a result of the decision made on his behalf. (p. 6)

In Ontario, the Guiding Principles for Child Advocacy have been stated as follows:

> 1. The parent is the child's first and natural advocate (unless parental rights have been limited or terminated by court order).
>
> 2. Parents should have access to understandable techniques and procedures which enable them to act as advocates for their child.
>
> 3. An adult third party advocate should be available if the parents are unwilling or unable to play an effective advocacy role.
>
> 4. The child should have a right to participate in the decision-making process.
>
> 5. Advocacy techniques and procedures should be understandable and meaningful to the child.
>
> 6. The need to safeguard the child's right to be heard is greatest when in the care of the state.
>
> 7. Certain situations are, in themselves, signals warranting third party scrutiny, regardless of the wishes of the parents or child.
>
> 8. Situations with potentially serious implications require resolution through a court process and full legal representation. (p. 8)

Subsequent child welfare legislation in Ontario formally entrenched the right of the child to be heard in law. This right, while not stated explicitly in British Columbia's child welfare legislation, can nonetheless be implied from various statutes, administrative policies and professional practices.

Recommendation #17

That the provincial government act to strengthen current approaches to child advocacy and independent administrative review by

- **fostering an environment which supports and encourages the advocacy role of parents, service providers and other natural advocates, and**
- **ensuring the establishment of an independent cross-ministry administrative advocacy and independent review mechanism with a statutory mandate and adequate resources to:**

  a) monitor and ensure protection of the rights of children and youths receiving or applying to receive publicly funded services;

  b) ensure that children and youths are fairly heard and appropriately represented when significant administrative decisions are being made that affect them; and

  c) receive and investigate complaints, review administrative decisions, and make recommendations about individual and systemic matters of concern to children and youths.

Results of consultation with ministries

Consensus exists about the need to ensure that the rights of children, youths and their families are safeguarded when important administrative decisions are being made which affect them. In the majority of cases, parents are the most appropriate advocates for their children but may, from time to time, require assistance in presenting their concerns to government officials. When public services are provided to children and youths, service providers such as foster parents and other alternate caregivers, child and youth care workers, social workers, probation officers, mental health and other professionals, are also expected to assume an administrative advocacy role that reflects their assessment and understanding of the needs of a child or youth with whom they are working.

When children or youths require publicly funded services, a consensual process of planning and decision making that carefully considers the child's or youth's needs and wishes is the desired objective and is best achieved through an accountable case management process. When consensus is not apparent and resolution is not achieved through case management or through the process of internal administrative review, access to an independent and impartial review is required.

Periodically, the views of adults seriously diverge concerning what is best for a child or youth with special needs. In some cases, the views of the child and youth may not be independently represented or fairly heard when important administrative plans and decisions are made. When serious disagreement occurs, access to fair and independent representation and review is necessary to ensure that the child's or youth's right to be heard is safeguarded.

Initially, the Ombudsman suggested that government consider establishing an independent office of child advocacy within the executive branch of government with a statutory, cross-ministry mandate and adequate resources. Offices of this nature exist, in varied forms, in Ontario, Quebec and Alberta. In their response, the Deputy Ministers' Committee on Social Policy suggested that this role could be more effectively assumed by the Office of the Ombudsman.

Ombudsman's consideration of the Deputy Ministers' proposals concerning administrative advocacy and external review

Following careful consideration by the Ombudsman, the merits of the Deputy Ministers' suggestion were apparent because of the Ombudsman's

- independent and neutral status as an Office of the Legislature,
- cross-ministry mandate,
- access to necessary and appropriate information,
- public reporting abilities consistent with appropriate confidentiality protection,
- concern for matters of administrative fairness and individual rights,
- ability to address individual and systemic issues, and
- use of mediation and consensual dispute resolution.

Potential limitations to the Ombudsman's Office acting as an independent representative to ensure the right of the child to be heard and as an external administrative review body when serious disagreements arise have been carefully considered and will require close monitoring during the next two years. Areas of potential concern include:

No power to change administrative decisions

The Ombudsman's office is not empowered to change an administrative decision made by the executive branch of government. However, the effectiveness of the Ombudsman's office in resolving complaints concerning children and youths, usually in a consensual manner, has been demonstrated. Our public reporting responsibilities may also serve to lessen potential fears about an "appeal" process with no authority to direct that administrative decisions be changed.

The advocacy role and Ombudsman impartiality

Traditional Ombudsman functions do not include advocacy on behalf of individual complainants. The impartial role of the Ombudsman must not be compromised and, to be effective, the impartiality of the office must be evident to all parties who are the subjects of an investigation. Political and legal advocacy is not within the jurisdiction of an Ombudsman's office.

However, the Ombudsman is an advocate of administrative fairness and due process. This report defines advocacy as a means to ensure that existing rights of children and youths are safeguarded, and places particular emphasis on the right of the child or youth to have his or her views fairly and independently represented when important administrative decisions are being made. In this context, there is compatibility between the Ombudsman and advocate roles.

Statutory mandate for a Child and Youth Ombudsman

The current Ombudsman appointed the Deputy Ombudsman for Children and Youth in 1987 and has established a Child and Youth team within the office which deals exclusively with complaints and systemic issues concerning children and youths. The need for specialized expertise dealing with complaints concerning children and youths has been formally recognized by Canadian Ombudsmen and is reflected in their Statement of Principles Concerning Children's Complaints (see p. 112).

It is the firm conviction of the current Ombudsman that a special focus on children and youths within the office is appropriate and necessary. But this view may not be shared by future incumbents. If the Ombudsman's office is asked by government to assume formal responsibility for external review and administrative advocacy functions in this public service sector, formalizing and defining this mandate in legislation should be seriously considered.

Jurisdictional limitations

The educational system plays a major role in ensuring the healthy development of all children and youths. The importance of effective links between the school and other health and social service agencies was addressed in the Sullivan Royal Commission on Education. While the Ombudsman's office has jurisdiction to investigate complaints concerning the Ministry of Education, it has no jurisdiction over school boards. The Ombudsman Act includes school boards in its schedule of authorities but this section still has not been proclaimed into force by Cabinet.

Adequacy of resources

In 1989, the Ombudsman's Office received close to 2000 complaints concerning children and youths. Many of these complaints require complex and time consuming mediation and/or investigation. The Deputy Ministers' Committee has agreed to the need for improved communication to children, youths and their parents about available avenues for review of administrative decisions. The Ombudsman's Office was also suggested by the Deputies' Committee as the most appropriate authority to perform the suggested external review and administrative advocacy functions. This is expected to result in an increased use of the Ombudsman's Office, and the Deputies have agreed that it will require additional resources to ensure a continuing quality of service.

Conclusion

In British Columbia, the Family and Child Service Act is now almost ten years old. The Mental Health Act was proclaimed in July 1981. These statutes, as well as the Community Care Facility Act, are currently under active review within the MSSH and Ministry of Health. Both ministries have invited the Ombudsman's Office to provide suggestions for legislative improvements based on its concerns for administrative fairness. We welcome this opportunity and commend government for its decision to update and improve important child related legislation. This office believes that the mandate of the Child and Youth Secretariat to ensure integration of services can complement the process of legislative review and, through the broadened mandate of the IMCCs, ensure meaningful community involvement to enhance the quality of the outcome.

Recent initiatives by the federal government will provide the opportunity for a more integrated federal-provincial focus on children's issues. As the federal government is currently engaged in a review of the Young Offenders' Act, it is timely for provincial child welfare and children's mental health legislation to be updated. Together, these statutes form the nucleus of government's mandate to respond to the special needs of children, youths and their families. Compatible principles are required that ensure adequate resources, integrated approaches to service delivery, and a special focus on prevention.

All statutes must satisfy the principles of administrative fairness. For child-centred statutes, these principles are best addressed when government's mandate includes:

1. An explicit positive statement defining the rights of children, youths and their parents that

can act as a foundation for the establishment of administrative policies and standards;

2. An integrated approach to the provision of an appropriate, planned continuum of multidisciplinary services that recognizes the need for formal links between government and communities and defines the commitment to prevention;

3. Access to independent advocacy mechanisms with a regulatory mandate to ensure that the child or youth is heard, and his or her interests fairly represented when significant decisions are made by administrative authorities or the Court;

4. Internal and external administrative review and appeal mechanisms that are simple to use, comply with principles of administrative fairness, and guarantee no adverse effects will result from requesting a review or appeal.

These elements have, to varying degrees, been incorporated in consolidated child, youth and family legislation in other provincial jurisdictions in recent years. In this province, government's commitment to review important child-related legislation provides an opportunity to further strengthen integrated approaches. The establishment of the Child and Youth Secretariat, and the broadened mandate provided to IMCCs, will provide an important cross-ministry focus for planned improvements to the child, youth and family serving system. Based on extensive consultations with communities and government ministries during preparation of this report, the Ombudsman's office is optimistic that the next two years will result in positive changes for British Columbia's children and youths.

Appendices

Glossary of Terms

"Children and Youth"

The population of children and youths referred to in this report are, unless otherwise specified, defined as persons up to the age of 19 years. Consultations by this office with a number of young people found that the term "youth" was much preferred to terms such as:

- adolescent ("too clinical"),
- child ("we are not children"),
- young person ("too formal"),
- teenager ("too old fashioned"),
- juvenile ("we are not delinquents"),
- young adult (second choice).

The 1988 edition of the Inter-Ministry Child Abuse Handbook (p.6) included recognition that:

> All professional intervention must be sensitive to the age, development level and personality of the child or young person receiving services. The term "child" is used in the handbook to cover all persons under age 19, the age of majority in British Columbia. However, the needs of a two year old are quite different from those of an adolescent, though each may legally be termed a child and each may have been abused. Adolescents justly resent being viewed or treated as children; it is inappropriate. Moreover, young people of the same age may be at different stages of development and will vary in other significant respects. Differential assessment and treatment is vital to meet the unique needs of each young person.

"Special Needs"

The Community Care Facility Act, Provincial Child Care Facilities Regulations (Part 1) defines special needs children as those "with social, physical, mental or emotional handicaps that require additional support and services". The primary focus of recommendations in this report is on those children or youth who require publicly funded services intended to address their social, emotional, psychological, behavioural, developmental and/or learning disabilities.

The definition of a "child at risk" used by the Deputy Ministers' Committee on Social Policy was a person under 19:

- whose health, safety or well-being is jeopardized by the actions of others, his or her own actions, or special needs;
- whose actions threaten the safety or well-being of others or the good order of the community; and/or
- whose ability to reach his/her own potential to function as an independent member of the family or community is jeopardized.

Residential "Facility"

Various terms are used by government to describe a range of residential child and youth care programs operated, funded or regulated by different ministries. Statutory definitions exist to include:

- "community care facility" — Community Care Facility Act (Section 1);
- "child care resource" — Family and Child Service Act (Section 1);
- "foster home" — Family and Child Service Act (Section 1);
- "correctional centre" — Correction Act (Section 1);
- "youth containment centre" — Correction Act (Section 1);
- "private mental hospital" — Mental Health Act (Section 1);
- "provincial mental health facility" — Mental Health Act (Section 1);
- "psychiatric unit" — Mental Health Act (Section 1);
- "hospital" — Hospital Act (Section 1);

This paper generally uses the terms "facility", "resource" or "program" in interchangeable ways but suggests that more precise cross-ministry definitions of distinct categories of residential child and youth care programs would be useful (see Recommendation #6).

"Professional"

The growing recognition of the need for specialized skills in various aspects of work with children, youth and families suggests the need for examination of the term "professional" as well as methods and processes of professionalization which usually require:

a) admission preparation of an academic and supervised experiential nature;

b) commitment to a written ethical code or statement of practice standards;

c) procedures for peer review and discipline; and

d) clear legal standing.

"Quality Assurance"

The term is derived from the health services sector and has been defined by the Canadian Comprehensive Auditing Foundation (CCAF) (1987) as

> "an internally administered, institution-wide review program designed to enhance patient care through the continuous measurement and assessment of important aspects of hospital operations. . .(it). . .is essentially a management tool to help senior and middle managers monitor operations. . . ." (CCAF, Accountability and Information for Cost-Effectiveness: An Agenda for Action, 1987, p.46).

"Hard to Serve" Youths

Often used synonymously with the psychiatric term "conduct disorder". Other similar terms include "hard to reach", "resistant", "anti-social" and "at-risk". These broad term are usually intended to mean that a special needs child or youth is resistant to a) acknowledging that they need some form of help, or b) accepting help (or treatment) if it is offered. Outreach child and youth care workers are often contracted by ministries in efforts to reach out to this population to encourage them to access available helping services.

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British Columbia Forensic Psychiatry Act, (1979) RS Chapter 139

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Saskatchewan Child and Family Services Act — Chapter F-7 — 1989

From the Interministry Child Abuse Handbook (1988 edition)

compiled by the Ministries of Attorney General, Education, Health,
Social Services and Housing and Solicitor General

PART I. *An Overview*

A. Guiding Principles

A sensitive approach to the problem of child abuse requires a commitment to certain guiding principles. The following are some of the more important of these:

1. **The protection of the child must be everyone's paramount concern. If in doubt, err on the side of protecting the child.** This does not, however, obviate the need to assist other affected persons. Child abuse and subsequent investigation and intervention can be extremely traumatic for a non-offending parent, and these parents should be given the help they need to protect their children themselves, and to cope with the situation. Other family members and individuals may also be seriously affected and require assistance in order to cope effectively with the situation. Additionally, offenders need help, and may sometimes be prepared to work to ensure that they never again abuse a child. When an offender is prepared to do this, he should receive the assistance he needs.

2. The primary responsibility for ensuring the safety and well being of a child lies with the child's parents. Generally speaking, the function of the state is to intervene only when the parents are unable or unwilling to fulfill this function, or when assistance is requested by the family. The state may also intervene to ensure that abuse or neglect does not occur in facilities for children outside the home.

3. Those trying to prevent child abuse and those who intervene in child abuse cases must work together in order to ensure that their efforts have the intended effect. Central to the approach taken by each of the ministries contributing to this handbook is a belief that the most effective response to all allegations of child abuse, at each step of the process of investigation, assessment, intervention and treatment, is one which is integrated and inter-ministerial. Experience has shown that where there is little or no communication between the ministries and agencies involved, tragedies can occur.

4. Professionals and others working in the area must be properly trained and their skills must be kept up-to-date.

5. There must be a firm commitment to the protection of children with special needs. Because these children may be particularly dependent on others for their safety and well being, special care must be taken in preventing and detecting abuse.

6. All professional intervention must be sensitive to the age, developmental level and personality of the child or young person receiving services. The term "child" is used in the handbook to cover all persons under age 19, the age of majority in British Columbia. However, the needs of a two year old are quite different from those of an adolescent, though each may legally be termed a child and each may have been abused. Adolescents justly resent being viewed or treated as children; it is inappropriate. Moreover, young people of the same age may be at different stages of development and will vary in other significant respects. Differential assessment and treatment is vital to meet the unique needs of each young person.

7. We must recognize and try to break the cycle of abuse. Often, a person who perpetrates child abuse was himself abused as a child. Thus, every time we prevent a child from being abused, we may be protecting future children as well. For intervention to be effective in the long run, both the offender and the victim of child abuse must be given sufficient assistance to reduce the likelihood of future abuse.

Children's Rights

ACT	AGE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Marriage Act		Marriage allowed only with the consent of a judge.															Marriage allowed with consent of parents.			Age 19 adult for all B.C. purposes.		
Family Relations Act		Parents must provide care and maintenance.																				
Family and Child Service Act		Child liable for protection.																				
School Act		Cannot attend public school.				May start school.		Must attend school.								May leave school.						
Name Act		Parent or guardian can change name without consent.											Must have consent of person to any change of name.									
Adoption Act		Child can be adopted without his/her consent.											Must have consent of person before he/she can be adopted.									
Employment Standards Act		Child cannot work (unless Director of Employment Standards or authorized representative approves).														Person may work.						
Motor Vehicle Act		Cannot obtain driver's licence.															May get driver's license with parent's signature.					
Motion Picture Act		Cannot go to "restricted" movie unless accompanied by a "responsible adult."																Movie attendance unrestricted.				
Young Offenders Act		Cannot be convicted of any offences.											Young Offender.		Can be convicted of an indictable offence as adult.				Treated as an adult offender.			
Common Law		Cannot be held to any contract except necessities of life (except in complex circumstances under the Infants Act).																				
Mental Health Act		Can only be voluntarily admitted to provincial mental health facility with consent of parents.															Can be voluntarily admitted to a mental health facility without parental consent.					
Infants Act		Cannot give legally binding consent to medical or dental treatment.															Can consent to medical/dental treatment if resonable effort has been made to get parental consent or a second physician certifies treatment is in best interests of the patient.					
ACT	AGE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21

Reproduced with amendments from booklet, "Youth and the Law," B.C. Civil Liberties and Legal Services Society, Vancouver, 1980. Amended November 1987.

This chart is a brief summary of legislation which directly affects children. It presents, in the simplest circumstances, the complexity of a legal "coming of age." For further information, clarification, or special circumstances, please contact Mental Health's legal counsel, Gerrit Clements, at 387-2310.

THE CONVENTION ON THE RIGHTS OF THE CHILD

Adopted by the General Assembly of the United Nations on 20 November 1989

Text

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the United Nations on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Unofficial summary of main provisions

PREAMBLE

The preamble recalls the basic principles of the United Nations and specific provisions of certain relevant human rights treaties and proclamations. It reaffirms the fact that children, because of their vulnerability, need special care and protection, and it places special emphasis on the primary caring and protective responsibility of the family. It also reaffirms the need for legal and other protection of the child before and after birth, the importance of respect for the cultural values of the child's community, and the vital role of international cooperation in securing children's rights.

THE CONVENTION ON THE RIGHTS OF THE CHILD

Text

Unofficial summary of main provisions

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

Definition of a child

A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Non-discrimination

All rights apply to all children without exception. It is the State's obligation to protect children from any form of discrimination and to take positive action to promote their rights.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Best interests of the child

All actions concerning the child shall take full account of his or her best interests. The State shall provide the child with adequate care when parents, or others charged with that responsibility, fail to do so.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Implementation of rights

The State must do all it can to implement the rights contained in the Convention.

THE CONVENTION ON THE RIGHTS OF THE CHILD

Text

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Unofficial summary of main provisions

Parental guidance and the child's evolving capacities

The State must respect the rights and responsibilities of parents and the extended family to provide guidance for the child which is appropriate to her or his evolving capacities.

Survival and development

Every child has the inherent right to life, and the State has an obligation to ensure the child's survival and development.

Name and nationality

The child has the right to a name at birth. The child also has the right to acquire a nationality and, as far as possible, to know his or her parents and be cared for by them.

Preservation of identity

The State has an obligation to protect, and if necessary, re-establish basic aspects of the child's identity. This includes name, nationality and family ties.

Separation from parents

The child has a right to live with his or her parents unless this is deemed to be incompatible with the child's best interests. The child also has the right to maintain contact with both parents if separated from one or both.

Text	Unofficial summary of main provisions
Article 10 1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family. 2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order *(ordre public)*, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.	**Family reunification** *Children and their parents have the right to leave any country and to enter their own for purposes of reunion or the maintenance of the child-parent relationship.*
Article 11 1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad. 2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.	**Illicit transfer and non-return** *The State has an obligation to prevent and remedy the kidnapping or retention of children abroad by a parent or third party.*
Article 12 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.	**The child's opinion** *The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child.*
Article 13 1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: *(a)* For respect of the rights or reputations of others; or *(b)* For the protection of national security or of public order *(ordre public)*, or of public health or morals.	**Freedom of expression** *The child has the right to express his or her views, obtain information, make ideas or information known, regardless of frontiers.*
Article 14 1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.	**Freedom of thought, conscience and religion** *The State shall respect the child's right to freedom of thought, conscience and religion, subject to appropriate parental guidance.*

Text

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others.

Article16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Unofficial summary of main provisions

Freedom of association

Children have a right to meet with others, and to join or form associations.

Protection of privacy

Children have the right to protection from interference with privacy, family, home and correspondence, and from libel or slander.

Access to appropriate information

The State shall ensure the accessibility to children of information and material from a diversity of sources, and it shall encourage the mass media to disseminate information which is of social and cultural benefit to the child, and take steps to protect him or her from harmful materials.

Parental responsibilities

Parents have joint primary responsibility for raising the child, and the State shall support them in this. The State shall provide appropriate assistance to parents in child-raising.

Text

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, *Kafala* of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Unofficial summary of main provisions

Protection from abuse and neglect

The State shall protect the child from all forms of maltreatment by parents or others responsible for the care of the child and establish appropriate social programmes for the prevention of abuse and the treatment of victims.

Protection of a child without family

The State is obliged to provide special protection for a child deprived of the family environment and to ensure that appropriate alternative family care or institutional placement is available in such cases. Efforts to meet this obligation shall pay due regard to the child's cultural background.

Adoption

In countries where adoption is recognized and/or allowed, it shall only be carried out in the best interests of the child, and then only with the authorization of competent authorities, and safeguards for the child.

THE CONVENTION ON THE RIGHTS OF THE CHILD

Text

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

Unofficial summary of main provisions

Refugee children

Special protection shall be granted to a refugee child or to a child seeking refugee status. It is the State's obligation to co-operate with competent organizations which provide such protection and assistance.

Disabled children

A disabled child has the right to special care, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.

Health and health services

The child has a right to the highest standard of health and medical care attainable. States shall place special emphasis on the provision of primary and preventive health care, public health education and the reduction of infant mortality. They shall encourage international co-operation in this regard and

Text

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition including within the framework of primary health care, through *inter alia* the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Unofficial summary of main provisions

Health and health services (continued)

strive to see that no child is deprived of access to effective health services.

Periodic review of placement

A child who is placed by the State for reasons of care, protection or treatment is entitled to have that placement evaluated regularly.

Social security

The child has the right to benefit from social security including social insurance.

Standard of living

Every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. Parents have the primary responsibility to ensure that the child has an adequate standard of living. The State's duty is to ensure that this responsibility can be fulfilled, and is. State responsibility can include material assistance to parents and their children.

Text

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Unofficial summary of main provisions

Education

The child has a right to education, and the State's duty is to ensure that primary education is free and compulsory, to encourage different forms of secondary education accessible to every child and to make higher education available to all on the basis of capacity. School discipline shall be consistent with the child's rights and dignity. The State shall engage in international co-operation to implement this right.

Aims of education

Education shall aim at developing the child's personality, talents and mental and physical abilities to the fullest extent. Education shall prepare the child for an active adult life in a free society and foster respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others.

Children of minorities or indigenous populations

Children of minority communities and indigenous populations have the right to enjoy their own culture and to practise their own religion and language.

Text	Unofficial summary of main provisions
Article 31 1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.	**Leisure, recreation and cultural activities** *The child has the right to leisure, play and participation in cultural and artistic activities.*
Article 32 1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: *(a)* Provide for a minimum age or minimum ages for admissions to employment; *(b)* Provide for appropriate regulation of the hours and conditions of employment; *(c)* Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.	**Child labour** *The child has the right to be protected from work that threatens his or her health, education or development. The State shall set minimum ages for employment and regulate working conditions.*
Article 33 States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.	**Drug abuse** *Children have the right to protection from the use of narcotic and psychotropic drugs, and from being involved in their production or distribution.*
Article 34 States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: *(a)* The inducement or coercion of a child to engage in any unlawful sexual activity; *(b)* The exploitative use of children in prostitution or other unlawful sexual practices; *(c)* The exploitative use of children in pornographic performances and materials.	**Sexual exploitation** *The State shall protect children from sexual exploitation and abuse, including prostitution and involvement in pornography.*
Article 35 States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.	**Sale, trafficking and abduction** *It is the State's obligation to make every effort to prevent the sale, trafficking and abduction of children.*
Article 36 States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.	**Other forms of exploitation** *The child has the right to protection from all forms of exploitation prejudicial to any aspects of the child's welfare not covered in articles 32, 33, 34 and 35.*

Text

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Unofficial summary of main provisions

Torture and deprivation of liberty

No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Both capital punishment and life imprisonment without the possibility of release are prohibited for offences committed by persons below 18 years. Any child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so. A child who is detained shall have legal and other assistance as well as contact with the family.

Armed conflicts

States Parties shall take all feasible measures to ensure that children under 15 years of age have no direct part in hostilities. No child below 15 shall be recruited into the armed forces. States shall also ensure the protection and care of children who are affected by armed conflict as described in relevant international law.

Rehabilitative care

The State has an obligation to ensure that child victims of armed conflicts, torture, neglect, maltreatment or exploitation receive appropriate treatment for their recovery and social reintegration.

Administration of juvenile justice

A child in conflict with the law has the right to treatment which promotes the child's sense of dignity and worth, takes the child's age into account and aims at his or her reintegration into society. The child is entitled to basic guarantees as well as legal or other assistance for his

Text

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- *(i)* To be presumed innocent until proven guilty according to law;
- *(ii)* To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- *(iii)* To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- *(iv)* Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- *(v)* If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- *(vi)* To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- *(vii)* To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State Party; or

(b) International law in force for that State.

Unofficial summary of main provisions

Administration of juvenile justice (continued)

or her defence. Judicial proceedings and institutional placements shall be avoided wherever possible.

Respect for higher standards

Wherever standards set in applicable national and international law relevant to the rights of the child that are higher than those in this Convention, the higher standard shall always apply.

Text

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

Unofficial summary of main provisions

Implementation and entry into force

The provisions of articles 42 - 54 notably foresee:

(i) *the State's obligation to make the rights contained in this Convention widely known to both adults and children.*

(ii) *the setting up of a Committee on the Rights of the child composed of ten experts, which will consider reports that States Parties to the Convention are to submit two years after ratification and every five years thereafter. The Convention enters into force—and the Committee would therefore be set up—once 20 countries have ratified it.*

(iii) *States Parties are to make their reports widely available to the general public.*

(iv) *The Committee may propose that special studies be undertaken on specific issues relating to the rights of the child, and may make its evaluations known to each State Party concerned as well as to the UN General Assembly.*

(v) *In order to "foster the effective implementation of the Convention and to encourage international cooperation", the specialized agencies of the UN (such as the ILO, WHO, and UNESCO) and UNICEF would be able to attend the meetings of the Committee. Together with any other body recognized as "competent", including NGOs in consultative status with the UN and UN organs such as the UNHCR, they can submit pertinent information to the Committee and be asked to advise on the optimal implementation of the Convention.*

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned,

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1 *(b)* of the present article repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the

Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.